United States Court of Appeals

for the Second Circuit

APPENDIX

NO. 77-7201

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

ABRAHAM BENJAMINS, as Personal Representative of the Estate of Hilde Benjamins, deceased,

Plaintiff/Appellant,

vs.

BRITISH EUROPEAN AIRWAYS, HAWKER SIDDELEY AVIATION, LTD., and HAWKER SIDDELEY GROUP, LTD.,

Defendants/Appellees.

UNITED STATES COURT OF APPEALS
FILED
JUN 29 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

JOINT APPENDIX

RONALD L. M. GOLDMAN & ASSOCIATES
By: RONALD L. M. GOLDMAN

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Marina del Rey, CA 90291
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Attorneys for Appellant

PAGINATION AS IN ORIGINAL COPY

NO. 77-7201

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FOR THE SECOND CIRCUIT

ABRAHAM BENJAMINS, as
Personal Representative
of the Estate of Hilde
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Plaintiff/Appellant,

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GROUP, LTD.,

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - -x

ABRAHAM BENJAMINS, as Personal Representative of the Estate of HILDE BENJAMINS, deceased,

Plaintiffs,

- against -

BRITISH EUROPEAN AIRWAYS, HAWKER SIDDELEY AVIATION LTD., and HAWKER SIDDELEY GROUP LTD.,

Defendants

- - - - - - - - - - - - - - - - - -x

Case No._____

COMPLAINT

Plaintiff Demands A Trial By Jury

Plaintiff, by his attorneys, KREINDLER & KREINDLER and RONALD L.M. GOLDMAN & ASSOCIATES, complaining of defendants, respectfully alleges:

A FIRST CLAIM AGAINST DEFENDANTS FOR THE WRONGFUL DEATH AND CONSCIOUS PAIN AND SUFFERING OF HILDE BENJAMINS BASED ON NEGLIGENCE OF HSA, GROUP, and WILLFUL MISCONDUCT OF BEA

1. Jurisdiction is founded on diversity of citizenship and amount under 28 United States Code, Section 1332, in that plaintiff, ABRAHAM BENJAMINS, is, and decedent, HILDE BENJAMINS, was, a citizen of the State of California and defendant BRITISH EUROPEAN AIRWAYS (hereinafter BEA), HAWKER SIDDELEY AVIATION LTD. (hereinafter HSA), HAWKER SIDDELEY GROUP LTD., (hereinafter GROUP), are corporations duly organized and existing under and by virtue of the laws of the United Kingdom; there is diversity between all plaintiffs and their decedents and all defendants, and the amount in controversy exceeds the sum of Ten Thousand Dollars ($10,000.00), exclusive of costs and disbursements.

2. Prior to the commencement of the within action, plaintiff ABRAHAM BENJAMINS was duly appointed Personal Representative of the Estate of HILDE BENJAMINS, deceased, pursuant to a

decree of the Superior Court, Los Angeles County, California, and said plaintiff is duly qualified and presently acting in said capacity.

3. At all times mentioned, defendant BEA was a common carrier engaged in the business of transporting passengers for hire by aircraft for valuable consideration in connection with which it owned, operated, maintained and controlled a certain Trident 1 aircraft, registration G-ARPI.

4. Prior to the times mentioned, defendant s HSA and GROUP designed, manufactured, assembled and sold said Trident 1 aircraft, registration G-ARPI, to defendant BEA for its use in transporting passengers for hire.

5. On June 18, 1972, defendant BEA as a common carrier of passengers for hire by aircraft, accepted plaintiff's decedent as a passenger for hire aboard BEA Flight 548, pursuant to a ticket.

6. The said ticket provided for international transportation by air with points of departure and destination in the United States, and purchased in the United States.

7. On June 18, 1972, while plaintiff's decedent was a passenger for hire aboard said aircraft, it crashed in the vicinity of Staines, England, shortly after take-off from Heathrow Airport.

8. Said crash caused injuries, conscious pain and suffering and death of plaintiff's deceased.

9. At all times mentioned, the United States of America and the United Kingdom were parties and high contracting parties to the convention for the unification of certain rules relating

to international transportation by air, known as the Warsaw Convention, Treaty Series, Number 876, 49 Stat. 3,000.

10. Said crash and death was caused by the defendants, their agents, servants and employees in that defendants HSA and GROUP negligently designed, manufactured, assembled and sold said aircraft and failed to properly modify, warn and instruct defendant BEA; and BEA was guilty of willful misconduct or such default as it is considered to be the equivalent of willful misconduct in the ownership, operation and maintenance of the aircraft and in the selection and training of flight crews; and defendants were otherwise negligent and guilty of willful misconduct.

11. HILDE BENJAMINS was and is survived by her husband, ABRAHAM BENJAMINS, and their two children, SHULAMITH BENJAMINS and MAURICE M. BENJAMINS, a minor, and as a result of said crash and death, they have sustained damages, including loss of support, services, consortium, parental care and guidance, the prospect of inheritance of future accumulations, burial and funeral expenses and other losses.

12. During flight and prior to, and at the time of, impact, HILDE BENJAMINS, deceased, consciously suffered great physical pain and mental anguish in contemplation of impending disaster and death.

13. By reason of the premises, plaintiff ABRAHAM BENJAMINS, Personal Representative of the Estate of HILDE BENJAMINS, deceased, has been damaged in the sum of THREE MILLION DOLLARS ($3,000,000) as a result of her wrongful death, and in the sum of ONE HUNDRED THOUSAND DOLLARS ($100,000) as a result of the conscious pain and suffering incurred.

A SECOND CLAIM AGAINST DEFENDANT BEA FOR THE WRONGFUL DEATH OF HILDE BENJAMINS BASED ON THE MONTREAL AGREEMENT

14. Plaintiff ABRAHAM BENJAMINS repeats and realleges each and every allegation contained in paragraphs One through Nine, inclusive, Eleven and Twelve.

15. Prior to the time mentioned, defendant BEA filed a Tariff and Agreement with the United States of America's Civil Aeronautics Board, which approved said Tariff and Agreement in CAB Number 189000 and Order Number E23680, 31 Fed. Reg. 4302 (1966), all of which were in valid force and effect on June 18, 1972.

16. Said crash was caused by defendant BEA in that it operated said aircraft when the crash occurred and caused the death of HILDE BENJAMINS, deceased, a passenger aboard.

17. By reason thereof, plaintiff ABRAHAM BENJAMINS, as Personal Representative of the Estate of HILDE BENJAMINS, deceased, has been damaged in the sum of SEVENTY-FIVE THOUSAND DOLLARS ($75,000).

A THIRD CLAIM AGAINST DEFENDANTS HSA AND GROUP FOR THE WRONGFUL DEATH AND CONSCIOUS PAIN AND SUFFERING OF HILDE BENJAMINS BASED ON BREACH OF WARRANTY.

18. Plaintiff ABRAHAM BENJAMINS, repeats and realleges each and every allegation contained in paragraphs One through Eight, inclusive, Eleven and Twelve.

19. Defendants HSA and GROUP expressly and/or impliedly warranted that the said aircraft and its component parts, including but not limited to its instruments, were airworthy, of merchantable quality, and fit and safe for the purposes for

which they were designed, manufactured, assembled, sold, intended and used.

20. Defendants HSA and GROUP breached said warranties in that the aircraft and its component parts, including but not limited to its instruments, were not airworthy, of merchantable quality, or fit and safe for the purposes for which they were designed, manufactured, assembled, sold, intended and used, and as a result thereof, said aircraft crashed, causing the damages alleged herein.

21. By reason of the premises, plaintiff ABRAHAM BENJAMINS, as Personal Representative of the Estate of HILDE BENJAMINS, deceased, has been damaged in the sum of THREE MILLION DOLLARS ($3,000,000) as a result of her wrongful death and in the sum of ONE HUNDRED THOUSAND DOLLARS ($100,000) as a result of conscious pain and suffering incurred.

A FOURTH CLAIM AGAINST DEFENDANTS HSA AND GROUP FOR THE WRONGFUL DEATH AND CONSCIOUS SUFFERING HILDE BENJAMINS BASED ON STRICT TORT LIABILITY

22. Plaintiff ABRAHAM BENJAMINS repeats and reallages each and every allegation contained in paragraphs One through Eight, inclusive, Eleven and Twelve.

23. Prior to June 18, 1972, defendants HSA and GROUP designed, manufactured, assembled and sold the said aircraft, its instruments, and its other component parts in a manner so as to render said aircraft, instruments and said component parts defective and unsafe for their intended use.

24. On June 18, 1972, said aircraft, its instruments, and its component parts were being operated for the use for which they were designed, manufactured, assembled and sold,

in a manner reasonably foreseeable by said defendants.

25. Defendants HSA and GROUP's designing, manufacture, assembling and sale of said aircraft, its instruments and its component parts caused said defect and unsafe conditions, and was a proximate cause of the crash, and as a result thereof, said defendants are strictly liable in tort to plaintiff.

26. By reason of the premises, plaintiff ABRAHAM BENJAMINS, as Personal Representative of the Estate of HILDE BENJAMINS, deceased, has been damaged in the sum of THREE MILLION DOLLARS ($3,000,000) as a result of her wrongful death and in the sum of ONE HUNDRED THOUSAND ($100,000) DOLLARS as a result of conscious pain and suffering incurred.

A FIFTH CLAIM AGAINST DEFENDANT BEA FOR THE WRONGFUL DEATH AND CONSCIOUS PAIN AND SUFFERING OF HILDE BENJAMINS BASED ON ABSOLUTE LIABILITY

27. Plaintiff ABRAHAM BENJAMINS, repeats and realleges each and every allegation contained in paragraphs One through Nine, inclusive, Eleven and Twelve.

28. Defendant BEA accepted HILDE BENJAMINS as a passenger aboard said aircraft with a ticket which did not meet the requirements of Article 3 of the Warsaw Convention.

29. As a result of such conduct, defendant BEA is absolutely liable to the plaintiff for all damages sustained, without limitation.

30. By reason of the premises, plaintiff ABRAHAM BENJAMINS, as Personal Representative of the Estate of HILDE BENJAMINS, deceased, has been damaged in the sum of THREE MILLION DOLLARS ($3,000,000) as a result of her wrongful

death, and in the sum of ONE HUNDRED THOUSAND DOLLARS ($100,000) as a result of conscious pain and suffering incurred.

WHEREFORE, plaintiff ABRAHAM BENJAMINS, as Personal Representative of the Estate of HILDE BENJAMINS, deceased, demands jusgment against the defendants in the sum of THREE MILLION DOLLARS ($3,000,000) for wrongful death and ONE HUNDRED THOUSAND DOLLARS ($100,000) on the FIRST Claim and SEVENTY-FIVE THOUSAND DOLLARS ($75,000) on the SECOND Claim, together with interest, costs and disbursements of this action.

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By_____
Attorney for Plaintiff

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

ABRAHAM BENJAMINS, as Personal Representative of the Estate of HILDE BENJAMINS, deceased,

Plaintiffs,

- against -

BRITISH EUROPEAN AIRWAYS, HAWKER SIDDELEY AVIATION LTD., and HAWKER SIDDELEY GROUP LTD.,

Defendants

----------x

73 Civ. 341
MDL No. 147
74 C 590 (BENJAMINS)

AMENDED COMPLAINT

Plaintiff Demands A Trial by Jury

Plaintiff, by his attorneys, KREINDLER & KREINDLER and RONALD L. M. GOLDMAN & ASSOCIATES, complaining of defendants, respectfully alleges:

A FIRST CLAIM AGAINST DEFENDANTS FOR THE WRONGFUL DEATH AND CONSCIOUS PAIN AND SUFFERING OF HILDE BENJAMINS BASED ON NEGLIGENCE OF HSA, GROUP, and WILLFUL MISCONDUCT OF BEA

1. Jurisdiction is founded on each of the following grounds:

a). Jurisdiction is founded on diversity of citizenship and amount under 28 United States Code, Section 1332, in that plaintiff, ABRAHAM BENJAMINS, is, and decedent, HILDE BENJAMINS, was, a permanent resident alien of the State of California and defendant BRITISH EUROPEAN AIRWAYS (hereinafter BEA), HAWKER SIDDELEY AVIATION LTD. (hereinafter HSA), HAWKER SIDDELEY GROUP LTD., (hereinafter GROUP), are corporations duly organized and existing under and by virtue of the laws of the United Kingdom with principal places of business in United Kingdom; there is diversity between all plaintiffs and their decedents and all defendants, and the amount in controversy exceeds the sum of Ten Thousand Dollars ($10,000.00) exclusive of costs and disbursements.

b). Federal question, 28 United States Code, Section 1331, in that this action arises under the constitutions, laws or treaties of the United States and the matter in controversy exceeds the sum of Ten Thousand Dollars ($10,000.00), exclusive of interest and costs.

The laws or treaties under which this action arises are as follows:

1. The Federal Aviation Act of 1958, 49 United States Code, Sections 1301, et. seq.

2. The Warsaw Treaty, 49 Statutes 3000, et. seq.

c). Commerce and anti-trust regulations, 28 United States Code, Section 1337, in that this action arises under an Act of Congress regulating commerce and protecting trade and commerce against restraints and monopolies, i.e., the Federal Aviation Act of 1958, 49 United States Code, Sections 1301, et. seq.

d). Aliens action for tort, 28 United States Code, Section 1350, in that the alleged torts were committed in violation of the Law of Nations or a Treaty of the United States. This is a civil action and the plaintiff is an alien.

(i) Law of Nations violated:
Aviation Safety Laws among Nations.

(ii) Treaty violated:
The Warsaw Treaty,
49 Statutes 3000, et. seq.

2. Prior to the commencement of the within action, said ABRAHAM BENJAMINS was duly appointed Personal Representative of the Estate of HILDE BENJAMINS, deceased, pursuant to a decree of the Superior Court, Los Angeles County, California, and is duly qualified and presently acting in said capacity.

3. At all times mentioned, defendant BEA was a common carrier engaged in the business of international air commerce, transporting passengers for hire by aircraft for valuable consideration in connection with which it owned, operated, maintained and controlled a certain Trident 1 aircraft, registration G-ARPI.

4. Prior to the times mentioned, defendants HSA and GROUP designed, manufactured, assembled and sold said Trident 1 aircraft, registration G-ARPI, to defendant BEA for its use in international air commerce, transporting passengers for hire.

5. On June 18, 1972, defendant BEA as a common carrier of passengers for hire by aircraft, accepted plaintiff's decedent as a passenger for hire aboard BEA Flight 548, pursuant to a ticket purchased in the County of Los Angeles, State of California.

6. The said ticket provided for international transportation by air with points of departure and destination in the United States, and purchased in the United States.

7. On June 18, 1972, while plaintiff's decedent was a passenger for hire aboard said aircraft, it crashed in the vicinity of Staines, England, shortly after take-off from Heathrow Airport.

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8. Said crash caused injuries, conscious pain and suffering and death of plaintiff's deceased.

9. At all times mentioned, the United States of America and the United Kingdom were parties and high contracting parties to the convention for the unification of certain rules relating to international transportation by air, known as the Warsaw Convention, Treaty Series, Number 876, 49 Statutes 3000 and International Air Service Agreement, 60 Statutes 1499.

10. Said crash and death was caused by the defendants, their agents, servants and employees in that defendants HSA and GROUP negligently designed, manufactured, assembled and sold said aircraft and failed to properly modify, warn and instruct defendant BEA; and BEA was guilty of willful misconduct or such default as it is considered to be the equivalent of willful misconduct in the ownership, operation and maintenance of the aircraft and in the selection and training of flight crews; and defendants were otherwise negligent and guilty of willful misconduct.

11. HILDE BENJAMINS was and is survived by her husband, ABRAHAM BENJAMINS, and their two children, SHULAMITH BENJAMINS and MAURICE M. BENJAMINS, a minor, and as a result of said crash and death, they have sustained damages, including loss of support, services, consortium, parental care and guidance, the prospect of inheritance of future accumulations, burial and funeral expenses and other losses.

12. During flight and prior to, and at the time of, impact, HILDE BENJAMINS, deceased, consciously suffered great physical pain and mental anguish in contemplation of impending disaster and death.

13. By reason of the premises, plaintiff ABRAHAM BENJAMINS, Personal Representative of the Estate of HILDE BENJAMINS deceased, has been damaged in the sum of THREE MILLION DOLLARS ($3,000,00) as a result of her wrongful death, and in the sum of ONE HUNDRED THOUSAND DOLLARS ($100,000) as a result of the conscious pain and suffering incurred.

A SECOND CLAIM AGAINST DEFENDANT BEA FOR THE WRONGFUL DEATH OF HILDE BENJAMINS BASED ON THE MONTREAL AGREEMENT

14. Plaintiff ABRAHAM BENJAMINS repeats and realleges each and every allegation contained in paragraphs One through Nine, inclusive, Eleven and Twelve.

15. Prior to the time mentioned, defendant BEA filed a Tariff and Agreement with the United States of America's Civil Aeronautics Board (CAB), which approved said Tariff and Agreement in CAB Number 189000 and Order Number E23680, 31 Fed. Reg. 4302 (1966), all of which were in valid force and effect on June 18, 1972.

16. Said crash was caused by defendant BEA in that it operated said aircraft when the crash occurred and caused the death of HILDE BENJAMINS, deceased, a passenger aboard.

17. By reason thereof, plaintiff ABRAHAM BENJAMINS, as Personal Representative of the Estate of HILDE BENJAMINS, deceased, has been damaged in the sum of SEVENTY-FIVE THOUSAND DOLLARS ($75,000).

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A THIRD CLAIM AGAINST DEFENDANTS HSA AND GROUP FOR THE WRONGFUL DEATH AND CONSCIOUS PAIN AND SUFFERING OF HILDE BENJAMINS BASED ON BREACH OF WARRANTY

18. Plaintiff ABRAHAM BENJAMINS, repeats and realleges each and every allegation contained in paragraphs One through Eight, inclusive, Eleven and Twelve.

19. Defendants HSA and GROUP expressly and/or impliedly warranted that the said aircraft and its component parts, including but not limited to its instruments, were airworthy, of merchantable quality, and fit and safe for the purposes for which they were designed, manufactured, assembled, sold, intended and used.

20. Defendants HSA and GROUP breached said warranties in that the aircraft and its component parts, including but not limited to its instruments, were not airworthy, of merchantable quality, or fit and safe for the purposes for which they were designed, manufactured, assembled, sold, intended and used, and as a result thereof, said aircraft crashed, causing the damages alleged herein.

21. By reason of the premises, plaintiff ABRAHAM BENJAMINS, as Personal Representative of the Estate of HILDE BENJAMINS, deceased, has been damaged in the sum of THREE MILLION DOLLARS ($3,000,000) as a result of her wrongful death and in the sum of ONE HUNDRED THOUSAND DOLLARS ($1,000,000) as a result of conscious pain and suffering incurred.

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A FOURTH CLAIM AGAINST DEFENDANTS
HSA AND GROUP FOR THE WRONGFUL DEATH
AND CONSCIOUS SUFFERING HILDE BENJAMINS
BASED ON STRICT TORT LIABILITY

22. Plaintiff ABRAHAM BENJAMINS repeats and realleges each and every allegation contained in paragraphs One through Eight, inclusive, Eleven and Twelve.

23. Prior to June 18, 1972, defendants HSA and GROUP designed, manufactured, assembled and sold the said aircraft, its instruments, and its other component parts in a manner so as to render said aircraft, instruments and said component parts defective and unsafe for their intended use.

24. On June 18, 1972, said aircraft, its instruments, and its component parts were being operated for the use for which they were designed, manufactured, assembled and sold, in a manner reasonably foreseeable by said defendants.

25. Defendants HSA and GROUP's designing, manufacture, assembling and sale of said aircraft, its instruments and its component parts caused said defect and unsafe conditions, and was a proximate cause of the crash, and as a result thereof, said defendants are strictly liable in tort to plaintiff.

26. By reason of the premises, plaintiff ABRAHAM BENJAMINS, as Personal Representative of the Estate of HILDE BENJAMINS, deceased, has been damaged in the sum of THREE MILLION DOLLARS ($3,000,000) as a result of her wrongful death and in the sum of ONE HUNDRED THOUSAND ($100,000) DOLLARS as a result of conscious pain and suffering incurred.

A FIFTH CLAIM AGAINST DEFENDANT BEA FOR THE WRONGFUL DEATH AND CONSCIOUS PAIN AND SUFFERING OF HILDE BENJAMINS BASED ON ABSOLUTE LIABILITY

27. Plaintiff ABRAHAM BENJAMINS, repeats and realleges each and every allegation contained in paragraphs One through Nine, inclusive, Eleven and Twelve.

28. Defendant BEA accepted HILDE BENJAMINS as a passenger aboard said aircraft with a ticket which did not meet the requirements of Article 3 of the Warsaw Convention.

29. As a result of such conduct, defendant BEA is absolutely liable to the plaintiff for all damages sustained, without limitation.

30. By reason of the premises, plaintiff ABRAHAM BENJAMINS, as Personal Representative of the Estate of HILDE BENJAMINS, deceased, has been damaged in the sum of THREE MILLION DOLLARS ($3,000,000) as a result of her wrongful death, and in the sum of ONE HUNDRED THOUSAND DOLLARS ($100,000) as a result of conscious pain and suffering incurred.

WHEREFORE, plaintiff ABRAHAM BENJAMINS, as Personal Representative of the Estate of HILDE BENJAMINS, deceased, demands judgment against the defendants in the sum of THREE MILLION DOLLARS ($3,000,000) for wrongful death and ONE HUNDRED THOUSAND DOLLARS ($100,000) on the FIRST, THIRD, FOURTH and FIFTH Claims and SEVENTY-FIVE THOUSAND DOLLARS ($75,000) on the SECOND CLAIM, together with interest, costs and disbursements of this action.

////

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By _____
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ABRAHAM BENJAMINS, as Personal Representative of the Estate of HILDE BENJAMINS, deceased, Plaintiffs, -against- BRITISH EUROPEAN AIRWAYS, HAWKER SIDDELEY AVIATION LTD., and HAWKER SIDDELEY GROUP LTD., Defendants.	73 CIV. 341 MDL NO. 147 74 C 590 (BENJAMINS) SECOND AMENDED COMPLAINT Plaintiff Demands A Trial by Jury

Plaintiff, by his attorneys, KREINDLER & KREINDLER and RONALD L. M. GOLDMAN & ASSOCIATES, complaining of defendants, respectfully alleges:

A FIRST CLAIM AGAINST DEFENDANTS FOR THE WRONGFUL DEATH, CONSCIOUS PAIN AND SUFFERING AND LOSS OF BAGGAGE OF HILDE BENJAMINS BASED ON NEGLIGENCE OF HSA, GROUP, AND WILLFUL MISCONDUCT OF BEA

1. Jurisdiction is founded on each of the following grounds:

a). Plaintiff, ABRAHAM BENJAMINS, is, and decedent, HILDE BENJAMINS, was, a permanent resident alien of the State of California and defendant BRITISH EUROPEAN AIRWAYS (hereinafter BEA) HAWKER SIDDELEY AVIATION LTD. (hereinafter HSA), HAWKER SIDDELEY GROUP LTD., (hereinafter GROUP), are corporations duly organized and existing under and by virtue of the laws of the United Kingdom with principal places of business in United Kingdom.

b). Federal question, 28 United States Code, Section 1331, in that this action arises under the constitutions, laws or treaties of the United States and the matter in controversy exceeds the sum of Ten Thousand Dollars ($10,000.00), exclusive of interest and costs.

The laws or treaties under which this action arises are as follows:

1. The Federal Aviation Act of 1958, 49 United States Code, Sections 1301, et seq.

2. The Warsaw Treaty, 49 Statutes 3000, et. seq.

c). Commerce and anti-trust regulations, 28 United States Code, Section 1337, in that this action arises under an Act of Congress regulating commerce and protecting trade and commerce against restraints and monopolies, i.e., the Federal Aviation Act of 1958, 49 United States Code, Sections 1301, et. seq.

d). Aliens action for tort, 28 United States Code, Section 1350, in that the alleged torts were committed in violation of the Law of Nations or a Treaty of the United States. This is a civil action and the plaintiff is an alien.

(i) Law of Nations violated:

Aviation Safety Laws among Nations.

(ii) Treaty violated:

The Warsaw Treaty.

49 Statutes 3000, et. seq.

2. Prior to the commencement of the within action, said ABRAHAM BENJAMINS was duly appointed Personal Representative of the Estate of HILDE BENJAMINS, deceased, pursuant to a decree of the Superior Court, Los Angeles County, California, and is duly qualified and presently acting in said capacity.

3. At all times mentioned, defendant BEA was a common carrier engaged in the business of international air commerce, transporting passengers for hire by aircraft for valuable consideration in connection with which it owned, operated, maintained and controlled a certain Trident 1 aircraft, registration G-ARPI.

4. Prior to the times mentioned, defendants HSA and GROUP designed, manufactured, assembled and sold said Trident 1 aircraft, registration G-ARPI, to defendant BEA for its use in international air commerce, transporting passengers for hire.

5. On June 18, 1972, defendant BEA as a common carrier of passengers for hire by aircraft, accepted plaintiff's decedent as a passenger for hire, including her handcarried and checked baggage, aboard BEA Flight 548, pursuant to a ticket purchased in the County of Los Angeles, State of California.

6. The said ticket and baggage check provided for international transportation by air with points of departure and destina-

tion in the United States, and purchased in the United States.

7. On June 18, 1972, while plaintiff's decedent was a passenger for hire aboard said aircraft, and while her handcarried and checked baggage was aboard said aircraft, it crashed in the vicinity of Staines, England, shortly after take-off from Heathrow Airport.

8. Said crash caused loss of handcarried and checked baggage, injuries, conscious pain and suffering and death of plaintiff's decedent.

9. At all times mentioned, the United States of America and the United Kingdom were parties and high contracting parties to the convention for the unification of certain rules relating to international transportation by air, known as the Warsaw Convention Treaty Series, Number 876, 49 Statutes 3000 and International Air Service Agreement, 60 Statutes 1499.

10. Said crash, death, and other losses were caused by the defendants, their agents, servants and employees in that defendants HSA and GROUP negligently designed, manufactured, assembled and sold said aircraft and failed to properly modify, warn and instruct defendant BEA; and BEA was guilty of willful misconduct or such default as it is considered to be the equivalent of willful misconduct in the ownership, operation and maintenance of the aircraft and in the selection and training of flight crews; and defendants were otherwise negligent and guilty of willful misconduct.

///

11. HILDE BENJAMINS was and is survived by her husband, ABRAHAM BENJAMINS, and their two children, SHULAMITH BENJAMINS and MAURICE M. BENJAMINS, a minor, and as a result of said crash and death, they have sustained damages, including loss of support, services, consortium, parental care and guidance, the prospect of inheritance of future accumulations, burial and funeral expenses and other losses.

12. During flight and prior to, and at the time of, impact, HILDE BENJAMINS, deceased, consciously suffered great physical pain and mental anguish in contemplation of impending disaster and death.

13. By reason of the premises, plaintiff ABRAHAM BENJAMINS, Personal Representative of the Estate of HILDE BENJAMINS deceased, has been damaged in the sum of THREE MILLION DOLLARS ($3,000,00.00) as a result of her wrongful death, and in the sum of ONE HUNDRED THOUSAND DOLLARS ($100,000.00) as a result of the conscious pain and suffering incurred and in the sum of ONE THOUSAND DOLLARS ($1,000.00) as a result of loss of handcarried and checked baggage.

A SECOND CLAIM AGAINST DEFENDANT BEA FOR THE WRONGFUL DEATH OF HILDE BENJAMINS BASED ON THE MONTREAL AGREEMENT.

14. Plaintiff ABRAHAM BENJAMINS repeats and realleges each and every allegation contained in paragraphs One through Nine, inclusive, Eleven and Twelve.

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15. Prior to the time mentioned, defendant BEA filed a Tariff and Agreement with the United States of America's Civil Aeronautics Board (CAB), which approved said Tariff and Agreement in CAB Number 189000 and Order Number E23680, 31 Fed. Reg. 4302 (1966), all of which were in valid force and effect on June 18, 1972.

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18. Plaintiff ABRAHAM BENJAMINS, repeats and realleges each and every allegation contained in paragraphs One through Eight, inclusive, Eleven and Twelve.

19. Defendants HSA and GROUP expressly and/or impliedly warranted that the said aircraft and its component parts, including but not limited to its instruments, were airworthy, of merchantable quality, and fit and safe for the purposes for which they were designed, manufactured, assembled, sold, intended and used.

20. Defendants HSA and GROUP breached said warranties in that the aircraft and its component parts, including but not limited to its instruments, were not airworthy, of merchantable quality, or fit and safe for the purposes for which they were designed, manufactured, assembled, sold, intended and used, and as a result thereof, said aircraft crashed, causing the damages alleged herein.

21. By reason of the premises, plaintiff ABRAHAM BENJAMINS, as Personal Representative of the Estate of HILDE BENJAMINS, deceased, has been damaged in the sum of THREE MILLION DOLLARS ($3,000,000.00) as a result of her wrongful death and in the sum of ONE HUNDRED THOUSAND DOLLARS ($1,000,000.00) as a result of conscious pain and suffering incurred and in the sum of ONE THOUSAND DOLLARS ($1,000.00) as a result of loss of baggage.

A FOURTH CLAIM AGAINST DEFENDANTS HSA AND GROUP FOR THE WRONGFUL DEATH, CONSCIOUS SUFFERING AND LOSS OF BAGGAGE OF HILDE BENJAMINS BASED ON STRICT TORT LIABILITY

22. Plaintiff ABRAHAM BENJAMINS repeats and realleges each and every allegation contained in paragraphs One through Eight, inclusive, Eleven and Twelve.

23. Prior to June 18, 1972, defendants HSA and GROUP designed manufactured, assembled and sold the said aircraft, its instruments, and its other component parts in a manner so as to render said aircraft, instruments and said component parts defective and unsafe for their intended use.

24. On June 18, 1972, said aircraft, its instruments, and its component parts were being operated for the use for which they were designed, manufactured, assembled and sold, in a manner reasonably foreseeable by said defendants.

25. Defendants HSA and GROUP's designing, manufacture, assembling and sale of said aircraft, its instruments and its component parts caused said defect and unsafe conditions, and was a proximate cause of the crash, and as a result thereof, said defendants are strictly liable in tort to plaintiff.

26. By reason of the premises, plaintiff ABRAHAM BENJAMINS, as Personal Representative of the Estate of HILDE BENJAMINS, deceased, has been damaged in the sum of THREE MILLION DOLLARS ($3,000,000.00) as a result of her wrongful death, in the sum of ONE HUNDRED THOUSAND DOLLARS ($100,000.00) as a result of conscious pain and suffering incurred and ONE THOUSAND DOLLARS ($1,000.00) as a result of loss of baggage.

A FIFTH CLAIM AGAINST DEFENDANT BEA FOR THE WRONGFUL DEATH, CONSCIOUS PAIN AND SUFFERING AND LOSS OF BAGGAGE OF HILDE BENJAMINS BASED ON ABSOLUTE LIABILITY

27. Plaintiff ABRAHAM BENJAMINS, repeats and realleges each and every allegation contained in paragraphs One through Nine, inclusive, Eleven and Twelve.

///

///

28. Defendant BEA accepted HILDE BENJAMINS as a passenger aboard said aircraft with a ticket and baggage check which did not meet the requirements of Articles 3 and 4, respectively, of the Warsaw Convention.

29. As a result of such conduct, defendant BEA is absolutely liable to the plaintiff for all damages sustained, without limitation.

30. By reason of the premises, plaintiff ABRAHAM BENJAMINS, as Personal Representative of the Estate of HILDE BENJAMINS, deceased, has been damaged in the sum of THREE MILLION DOLLARS ($3,000,000.00) as a result of her wrongful death, in the sum of ONE HUNDRED THOUSAND DOLLARS ($100,000.00) as a result of conscious pain and suffering incurred, and in the sum of ONE THOUSAND DOLLARS ($1,000.00) as a result of loss of baggage.

A SIXTH CLAIM AGAINST DEFENDANT BEA FOR THE LOSS OF HANDCARRIED AND CHECKED BAGGAGE OF HILDE BENJAMINS BASED ON THE WARSAW CONVENTION

31. Plaintiff ABRAHAM BENJAMINS repeats and realleges each and every allegation in paragraphs One through Eleven inclusive, and Fifteen.

32. As a result of its conduct defendant BEA lost or destroye decedent HILDE BENJAMINS' checked and handcarried baggage which the defendant BEA accepted for transportation by air.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ABRAHAM BENJAMINS, as Personal Representative of the Estate of HILDE BENJAMINS, deceased, Plaintiffs, -against- BRITISH EUROPEAN AIRWAYS, HAWKER SIDDELEY AVIATION LTD., and HAWKER SIDDELEY GROUP LTD., Defendants.	73 CIV. 341 MDL NO. 147 74 C 590 (BENJAMINS) ORDER

This cause came on to be heard on _____ 19_____, on plaintiff's motion for leave to file a second amended complaint, and it appearing that justice requires that such leave be given, and the court being fully advised,

IT IS ORDERED:

(1) That plaintiff be given leave to file his second amended complaint; and

(2) That defendants, BRITISH EUROPEAN AIRWAYS, HAWKER SIDDELEY AVIATION LTD., and HAWKER SIDDELEY GROUP LTD. answer or otherwise move with respect to the said second amended complaint within _____ days after service thereof.

DATED: _____, 19_____.

_____
United States District Judge

(VERIFICATION - 446 and 2015.5 C.C.P.)

STATE OF CALIFORNIA, }ss.
County of _____

I, the undersigned, say: I am the _____

_____

_____

in the above entitled action; I have read the foregoing _____

_____

and know the contents thereof; and that the same is true of my own knowledge, except as to the matters which are therein stated upon my information or belief, and as to those matters that I believe it to be true.

_____

I certify (or declare) under penalty of perjury, that the foregoing is true and correct.

Executed on _____ (date) *at* _____ (place), *California*

_____
(Signature)

(PROOF OF SERVICE BY MAIL - 1013a, 2015.5 C.C.P.)

STATE OF CALIFORNIA
COUNTY OF Los Angeles }ss.

I am a resident of/employed in the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address/residence address is:
13737 Fiji Way, Marina Del Rey, California 90291

On December 30, 19 76, *I served the within* Notice of Motion, Motion for Leave to File Second Amended Complaint and Points and Authorities, Second Amended Complaint and Order

on the interested parties

in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Marina Del Rey, California 90291 *addressed as follows:*
see attached

I certify (or declare), under penalty of perjury, that the foregoing is true and correct.*

Executed on December 30, 1976 (date) *at* Marina Del Rey (place), *California*

Shirli C. Lowe
Signature

**Both the verification and proof of service by mail forms, being signed under penalty of perjury, do not require notarization.*

TO:

James J. Finnerty, Jr., Esq.
Mendes & Mount
Attorneys for defendant HSA
27 William Street
New York, New York 10005

Ronald E. Pace, Esq.
Condon & Forsyth
Attorneys for defendant BEA
1251 Avenue of the Americas
New York, New York 10020

Robert Conason, Esq.
Gair, Gair & Conason
Attorneys for plaintiffs
Morgan Guarantee Trust Company, et al.
84 William Street
New York, New York 10038

Stanely J. Levy, Esq.
Kreindler & Kreindler
Attorneys for plaintiffs
Lucille R. Lanza, et al.
99 Park Avenue
New York, New York 10016

A FIFTH CLAIM AGAINST DEFENDANT BEA FOR THE WRONGFUL DEATH AND CONSCIOUS PAIN AND SUFFERING OF HILDE BENJAMINS BASED ON ABSOLUTE LIABILITY

27. Plaintiff ABRAHAM BENJAMINS, repeats and realleges each and every allegation contained in paragraphs One through Nine, inclusive, Eleven and Twelve.

28. Defendant BEA accepted HILDE BENJAMINS as a passenger aboard said ai craft with a ticket which did not meet the requirements of Article 3 of the Warsaw Convention.

29. As a result of such conduct, defendant BEA is absolutely liable to the plaintiff for all damages sustained, without limitation.

30. By reason of the premises, plaintiff ABRAHAM BENJAMINS, as Personal Representative of the Estate of HILDE BENJAMINS, deceased, has been damaged in the sum of THREE MILLION DOLLARS ($3,000,000) as a result of her wrongful death, and in the sum of ONE HUNDRED THOUSAND DOLLARS ($100,000) as a result of conscious pain and suffering incurred.

WHEREFORE, plaintiff ABRAHAM BENJAMINS, as Personal Representative of the Estate of HILDE BENJAMINS, deceased, demands judgment against the defendants in the sum of THREE MILLION DOLLARS ($3,000,000) for wrongful death and ONE HUNDRED THOUSAND DOLLARS ($100,000) on the FIRST, THIRD, FOURTH and FIFTH Claims and SEVENTY-FIVE THOUSAND DOLLARS ($75,000) on the SECOND CLAIM, together with interest, costs and disbursements of this action.

////

RONALD L. M. GOLDMAN & ASSOCIATES
13737 Fiji Way
Marina Del Rey, California 90291
Tel: (213) 821-8886

KREINDLER & KREINDLER
99 Park Avenue
New York, New York 10016
Tel: (212) MU 7-8181

By _____
RONALD L. M. GOLDMAN
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ABRAHAM BENJAMINS, as Personal Representative of the Estate of HILDE BENJAMINS, deceased, Plaintiffs, -against- BRITISH EUROPEAN AIRWAYS, HAWKER SIDDELEY AVIATION LTD., and HAWKER SIDDELEY GROUP LTD., Defendants.	73 CIV. 341 MDL NO. 147 74 C 590 (BENJAMINS) SECOND AMENDED COMPLAINT Plaintiff Demands A Trial by Jury

Plaintiff, by his attorneys, KREINDLER & KREINDLER and RONALD L. M. GOLDMAN & ASSOCIATES, complaining of defendants, respectfully alleges:

A FIRST CLAIM AGAINST DEFENDANTS FOR THE WRONGFUL DEATH, CONSCIOUS PAIN AND SUFFERING AND LOSS OF BAGGAGE OF HILDE BENJAMINS BASED ON NEGLIGENCE OF HSA, GROUP, AND WILLFUL MISCONDUCT OF BEA

1. Jurisdiction is founded on each of the following grounds:

a). Plaintiff, ABRAHAM BENJAMINS, is, and decedent, HILDE BENJAMINS, was, a permanent resident alien of the State of California and defendant BRITISH EUROPEAN AIRWAYS (hereinafter BEA) HAWKER SIDDELEY AVIATION LTD. (hereinafter HSA), HAWKER SIDDELEY GROUP LTD., (hereinafter GROUP), are corporations duly organized and existing under and by virtue of the laws of the United Kingdom with principal places of business in United Kingdom.

b). Federal question, 28 United States Code, Section 1331, in that this action arises under the constitutions, laws or treaties of the United States and the matter in controversy exceeds the sum of Ten Thousand Dollars ($10,000.00), exclusive of interest and costs.

The laws or treaties under which this action arises are as follows:

1. The Federal Aviation Act of 1958, 49 United States Code, Sections 1301, et seq.

2. The Warsaw Treaty, 49 Statutes 3000, et. seq.

c). Commerce and anti-trust regulations, 28 United States Code, Section 1337, in that this action arises under an Act of Congress regulating commerce and protecting trade and commerce against restraints and monopolies, i.e., the Federal Aviation Act of 1958, 49 United States Code, Sections 1301, et. seq.

d). Aliens action for tort, 28 United States Code, Section 1350, in that the alleged torts were committed in violation of the Law of Nations or a Treaty of the United States. This is a civil action and the plaintiff is an alien.

(i) Law of Nations violated:

Aviation Safety Laws among Nations.

(ii) Treaty violated:

The Warsaw Treaty,

49 Statutes 3000, et. seq.

2. Prior to the commencement of the within action, said ABRAHAM BENJAMINS was duly appointed Personal Representative of the Estate of HILDE BENJAMINS, deceased, pursuant to a decree of the Superior Court, Los Angeles County, California, and is duly qualified and presently acting in said capacity.

3. At all times mentioned, defendant BEA was a common carrier engaged in the business of international air commerce, transporting passengers for hire by aircraft for valuable consideration in connection with which it owned, operated, maintained and controlled a certain Trident 1 aircraft, registration G-ARPI.

4. Prior to the times mentioned, defendants HSA and GROUP designed, manufactured, assembled and sold said Trident 1 aircraft, registration G-ARPI, to defendant BEA for its use in international air commerce, transporting passengers for hire.

5. On June 18, 1972, defendant BEA as a common carrier of passengers for hire by aircraft, accepted plaintiff's decedent as a passenger for hire, including her handcarried and checked baggage, aboard BEA Flight 548, pursuant to a ticket purchased in the County of Los Angeles, State of California.

6. The said ticket and baggage check provided for international transportation by air with points of departure and destina-

tion in the United States, and purchased in the United States.

7. On June 18, 1972, while plaintiff's decedent was a passenger for hire aboard said aircraft, and while her handcarried and checked baggage was aboard said aircraft, it crashed in the vicinity of Staines, England, shortly after take-off from Heathrow Airport.

8. Said crash caused loss of handcarried and checked baggage, injuries, conscious pain and suffering and death of plaintiff's decedent.

9. At all times mentioned, the United States of America and the United Kingdom were parties and high contracting parties to the convention for the unification of certain rules relating to international transportation by air, known as the Warsaw Convention Treaty Series, Number 876, 49 Statutes 3000 and International Air Service Agreement, 60 Statutes 1499.

10. Said crash, death, and other losses were caused by the defendants, their agents, servants and employees in that defendants HSA and GROUP negligently designed, manufactured, assembled and sold said aircraft and failed to properly modify, warn and instruct defendant BEA; and BEA was guilty of willful misconduct or such default as it is considered to be the equivalent of willful misconduct in the ownership, operation and maintenance of the aircraft and in the selection and training of flight crews; and defendants were otherwise negligent and guilty of willful misconduct.

///

11. HILDE BENJAMINS was and is survived by her husband, ABRAHAM BENJAMINS, and their two children, SHULAMITH BENJAMINS and MAURICE M. BENJAMINS, a minor, and as a result of said crash and death, they have sustained damages, including loss of support, services, consortium, parental care and guidance, the prospect of inheritance of future accumulations, burial and funeral expenses and other losses.

12. During flight and prior to, and at the time of, impact, HILDE BENJAMINS, deceased, consciously suffered great physical pain and mental anguish in contemplation of impending disaster and death.

13. By reason of the premises, plaintiff ABRAHAM BENJAMINS, Personal Representative of the Estate of HILDE BENJAMINS deceased, has been damaged in the sum of THREE MILLION DOLLARS ($3,000,00.00) as a result of her wrongful death, and in the sum of ONE HUNDRED THOUSAND DOLLARS ($100,000.00) as a result of the conscious pain and suffering incurred and in the sum of ONE THOUSAND DOLLARS ($1,000.00) as a result of loss of handcarried and checked baggage.

A SECOND CLAIM AGAINST DEFENDANT BEA FOR THE WRONGFUL DEATH OF HILDE BENJAMINS BASED ON THE MONTREAL AGREEMENT.

14. Plaintiff ABRAHAM BENJAMINS repeats and realleges each and every allegation contained in paragraphs One through Nine, inclusive, Eleven and Twelve.

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15. Prior to the time mentioned, defendant BEA filed a Tariff and Agreement with the United States of America's Civil Aeronautics Board (CAB), which approved said Tariff and Agreement in CAB Number 189000 and Order Number E23680, 31 Fed. Reg. 4302 (1966), all of which were in valid force and effect on June 18, 1972.

16. Said crash was caused by defendant BEA in that it operated said aircraft when the crash occurred and caused the death of HILDE BENJAMINS, deceased, a passenger aboard.

17. By reason thereof, plaintiff ABRAHAM BENJAMINS, as Personal Representative of the Estate of HILDE BENJAMINS, deceased, has been damaged in the sum of SEVENTY-FIVE THOUSAND DOLLARS ($75,000.00).

A THIRD CLAIM AGAINST DEFENDANTS HSA AND GROUP FOR THE WRONGFUL DEATH, CONSCIOUS PAIN AND SUFFERING AND LOSS OF BAGGAGE OF HILDE BENJAMINS BASED ON BREACH OF WARRANTY

18. Plaintiff ABRAHAM BENJAMINS, repeats and realleges each and every allegation contained in paragraphs One through Eight, inclusive, Eleven and Twelve.

19. Defendants HSA and GROUP expressly and/or impliedly warranted that the said aircraft and its component parts, including but not limited to its instruments, were airworthy, of merchantable quality, and fit and safe for the purposes for which they were designed, manufactured, assembled, sold, intended and used.

20. Defendants HSA and GROUP breached said warranties in that the aircraft and its component parts, including but not limited to its instruments, were not airworthy, of merchantable quality, or fit and safe for the purposes for which they were designed, manufactured, assembled, sold, intended and used, and as a result thereof, said aircraft crashed, causing the damages alleged herein.

21. By reason of the premises, plaintiff ABRAHAM BENJAMINS, as Personal Representative of the Estate of HILDE BENJAMINS, deceased, has been damaged in the sum of THREE MILLION DOLLARS ($3,000,000.00) as a result of her wrongful death and in the sum of ONE HUNDRED THOUSAND DOLLARS ($1,000,000.00) as a result of conscious pain and suffering incurred and in the sum of ONE THOUSAND DOLLARS ($1,000.00) as a result of loss of baggage.

A FOURTH CLAIM AGAINST DEFENDANTS HSA AND GROUP FOR THE WRONGFUL DEATH, CONSCIOUS SUFFERING AND LOSS OF BAGGAGE OF HILDE BENJAMINS BASED ON STRICT TORT LIABILITY

22. Plaintiff ABRAHAM BENJAMINS repeats and realleges each and every allegation contained in paragraphs One through Eight, inclusive, Eleven and Twelve.

23. Prior to June 18, 1972, defendants HSA and GROUP designed manufactured, assembled and sold the said aircraft, its instruments, and its other component parts in a manner so as to render said aircraft, instruments and said component parts defective and unsafe for their intended use.

24. On June 18, 1972, said aircraft, its instruments, and its component parts were being operated for the use for which they were designed, manufactured, assembled and sold, in a manner reasonably foreseeable by said defendants.

25. Defendants HSA and GROUP's designing, manufacture, assembling and sale of said aircraft, its instruments and its component parts caused said defect and unsafe conditions, and was a proximate cause of the crash, and as a result thereof, said defendants are strictly liable in tort to plaintiff.

26. By reason of the premises, plaintiff ABRAHAM BENJAMINS, as Personal Representative of the Estate of HILDE BENJAMINS, deceased, has been damaged in the sum of THREE MILLION DOLLARS ($3,000,000.00) as a result of her wrongful death, in the sum of ONE HUNDRED THOUSAND DOLLARS ($100,000.00) as a result of conscious pain and suffering incurred and ONE THOUSAND DOLLARS ($1,000.00) as a result of loss of baggage.

A FIFTH CLAIM AGAINST DEFENDANT BEA FOR THE WRONGFUL DEATH, CONSCIOUS PAIN AND SUFFERING AND LOSS OF BAGGAGE OF HILDE BENJAMINS BASED ON ABSOLUTE LIABILITY

27. Plaintiff ABRAHAM BENJAMINS, repeats and realleges each and every allegation contained in paragraphs One through Nine, inclusive, Eleven and Twelve.

///

///

28. Defendant BEA accepted HILDE BENJAMINS as a passenger aboard said aircraft with a ticket and baggage check which did not meet the requirements of Articles 3 and 4, respectively, of the Warsaw Convention.

29. As a result of such conduct, defendant BEA is absolutely liable to the plaintiff for all damages sustained, without limitation.

30. By reason of the premises, plaintiff ABRAHAM BENJAMINS, as Personal Representative of the Estate of HILDE BENJAMINS, deceased, has been damaged in the sum of THREE MILLION DOLLARS ($3,000,000.00) as a result of her wrongful death, in the sum of ONE HUNDRED THOUSAND DOLLARS ($100,000.00) as a result of conscious pain and suffering incurred, and in the sum of ONE THOUSAND DOLLARS ($1,000.00) as a result of loss of baggage.

A SIXTH CLAIM AGAINST DEFENDANT BEA FOR THE LOSS OF HANDCARRIED AND CHECKED BAGGAGE OF HILDE BENJAMINS BASED ON THE WARSAW CONVENTION

31. Plaintiff ABRAHAM BENJAMINS repeats and realleges each and every allegation in paragraphs One through Eleven inclusive, and Fifteen.

32. As a result of its conduct defendant BEA lost or destroye decedent HILDE BENJAMINS' checked and handcarried baggage which the defendant BEA accepted for transportation by air.

33. Pursuant to provisions of said Warsaw Convention, Articles 18 and 30(3), defendant BEA is liable for this loss.

34. By reason of the premises plaintiff ABRAHAM BENJAMINS, as Personal Representative of the Estate of HILDE BENJAMINS, deceased, has been damaged in the sum of ONE THOUSAND DOLLARS ($1,000.00) as a result of loss of baggage.

WHEREFORE, plaintiff ABRAHAM BENJAMINS, as Personal Representative of the Estate of HILDE BENJAMINS, deceased, demands judgment against the defendants in the sum of THREE MILLION DOLLARS ($3,000,000.00) for wrongful death, ONE HUNDRED THOUSAND DOLLARS ($100,000.00) on the FIRST, THIRD, FOURTH and FIFTH Claims, and in the sum of ONE THOUSAND DOLLARS ($1,000.00) on the SIXTH Claim, together with interest, costs and disbursements in this action.

RONALD L. M. GOLDMAN & ASSOCIATES
13737 Fiji Way
Marina Del Rey, California 90291
Tel: (213) 821-8886

KREINDLER & KREINDLER
99 Park Avenue
New York, New York 10016
Tel: (212) MU 7-8181

By: Ronald L. Goldman
RONALD L. M. GOLDMAN
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ABRAHAM BENJAMINS, as Personal Representative of the Estate of HILDE BENJAMINS, deceased, Plaintiffs, -against- BRITISH EUROPEAN AIRWAYS, HAWKER SIDDELEY AVIATION LTD., and HAWKER SIDDELEY GROUP LTD., Defendants.	73 CIV. 341 MDL NO. 147 74 C 590 (BENJAMINS) ORDER

This cause came on to be heard on _____ 19_____, on plaintiff's motion for leave to file a second amended complaint, and it appearing that justice requires that such leave be given, and the court being fully advised,

IT IS ORDERED:

(1) That plaintiff be given leave to file his second amended complaint; and

(2) That defendants, BRITISH EUROPEAN AIRWAYS, HAWKER SIDDELEY AVIATION LTD., and HAWKER SIDDELEY GROUP LTD. answer or otherwise move with respect to the said second amended complaint within _____ days after service thereof.

DATED: _____, 19_____.

_____
United States District Judge

(VERIFICATION - 446 and 2015.5 C.C.P.)

STATE OF CALIFORNIA, }ss.
County of _____

I, the undersigned, say: I am the _____

_____

_____

in the above entitled action; I have read the foregoing _____

_____

and know the contents thereof; and that the same is true of my own knowledge, except as to the matters which are therein stated upon my information or belief, and as to those matters that I believe it to be true.

_____

I certify (or declare) under penalty of perjury, that the foregoing is true and correct.

Executed on _____ (date) *at* _____ (place), *California*

_____
(Signature)

(PROOF OF SERVICE BY MAIL - 1013a, 2015.5 C.C.P.)

STATE OF CALIFORNIA
COUNTY OF Los Angeles } ss.

I am a resident of/employed in the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address/residence address is:

13737 Fiji Way, Marina Del Rey, California 90291

On December 30, *19* 76, *I served the within* Notice of Motion, Motion for Leave to File Second Amended Complaint and Points and Authorities, Second Amended Complaint and Order

on the interested parties

in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Marina Del Rey, California 90291 *addressed as follows:*

see attached

I certify (or declare), under penalty of perjury, that the foregoing is true and correct.*

Executed on December 30, 1976 (date) *at* Marina Del Rey (place), *California*

Rhoda C Lowe
Signature

** Both the verification and proof of service by mail forms, being signed under penalty of perjury, do not require notarization.*

TO:

James J. Finnerty, Jr., Esq.
Mendes & Mount
Attorneys for defendant HSA
27 William Street
New York, New York 10005

Ronald E. Pace, Esq.
Condon & Forsyth
Attorneys for defendant BEA
1251 Avenue of the Americas
New York, New York 10020

Robert Conason, Esq.
Gair, Gair & Conason
Attorneys for plaintiffs
Morgan Guarantee Trust Company, et al.
84 William Street
New York, New York 10038

Stanely J. Levy, Esq.
Kreindler & Kreindler
Attorneys for plaintiffs
Lucille R. Lanza, et al.
99 Park Avenue
New York, New York 10016

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ABRAHAM BENJAMINS, as Personal Representative of the Estate of HILDE BENJAMINS, deceased,	:	
Plaintiff,	:	BRUCHHAUSEN, J.
- against -	:	CIVIL ACTION FILE NO. 74 C 590
BRITISH EUROPEAN AIRWAYS, HAWKER SIDDELEY AVIATION, LTD., and HAWKER SIDDELEY GROUP, LTD.,	:	
Defendants.	:	

Defendant BRITISH EUROPEAN AIRWAYS CORPORATION, sued herein as BRITISH EUROPEAN AIRWAYS, by its attorneys, Condon & Forsyth, for its Answer to the Complaint herein:

AS TO THE FIRST ALLEGED CLAIM FOR RELIEF

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1 of the Complaint, except that Defendant BRITISH EUROPEAN AIRWAYS CORPORATION (hereinafter BEA) admits that it is a public corporation organized and existing under and by virtue of the laws of the United Kingdom of Great Britain and Northern Ireland.

2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2 of the Complaint.

3. Denies the allegations in Paragraph 3 of the Complaint except that defendant BEA admits that on June 18, 1972 it was a common carrier of passengers for hire by aircraft and owned, operated and maintained a certain aircraft bearing Registration G-ARPI, which aircraft was commonly referred to as a Trident I jet aircraft.

MAY 19 1974

4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4 of the Complaint except that Defendant BEA admits that the aircraft bearing Registration G-ARPI was acquired for use by BEA in its business as a common carrier of passengers for hire.

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5 of the Complaint.

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6 of the Complaint.

7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7 of the Complaint except that Defendant BEA admits that its aircraft G-ARPI crashed in the vicinity of Staines, England after take-off from Heathrow Airport on June 18, 1972.

8. Denies the allegations in Paragraph 8 of the Complaint.

9. Denies the allegations in Paragraph 9 of the Complaint except that Defendant BEA admits that the United States of America and the United Kingdom of Great Britain and Northern Ireland were at all relevant times and are parties to the Convention for the Unification of Certain Rules Relating to International Transportation by Air and Additional Protocol, concluded at Warsaw on October 12, 1929, commonly referred to as the Warsaw Convention.

10. Denies the allegations in Paragraph 10 of the Complaint which are intended to refer to Defendant BEA and denies knowledge or information sufficient to form a

belief as to the truth of the allegations in Paragraph 10 of the Complaint which are not intended to refer to Defendant BEA.

11. Denies the allegations in Paragraph 11 of the Complaint.

12. Denies the allegations in Paragraph 12 of the Complaint.

13. Denies the allegations in Paragraph 13 of the Complaint.

AS TO THE SECOND ALLEGED CLAIM FOR RELIEF

14. Answering Paragraph 14 of the Complaint, Defendant BEA repeats, reiterates and realleges each and every admission, allegation and denial in Paragraphs 1 through 9 inclusive and 11 and 12 of this Answer with the same force and effect as if herein set forth in full.

15. Denies the allegations in Paragraph 15 of the Complaint except that Defendant BEA admits that prior to June 18, 1972 it had filed a counterpart to CAB Agreement No. 18900 with the Civil Aeronautics Board of the United States which was still in effect on June 18, 1972.

16. Denies the allegations in Paragraph 16 of the Complaint.

17. Denies the allegations in Paragraph 17 of the Complaint.

AS TO THE FIFTH ALLEGED CLAIM FOR RELIEF

18. Answering Paragraph 27 of the Complaint, Defendant BEA repeats, reiterates and realleges each and every admission, allegation and denial contained in Paragraphs 1 through 9 inclusive and 11 and 12 of this

Answer with the same force and effect as if herein set forth in full.

19. Denies the allegations in Paragraph 28 of the Complaint.

20. Denies the allegations in Paragraph 29 of the Complaint.

21. Denies the allegations in Paragraph 30 of the Complaint.

AFFIRMATIVE DEFENSE TO THE FIRST, SECOND AND FIFTH ALLEGED CLAIMS FOR RELIEF

22. The liability of Defendant BEA, if any, with respect to the alleged injuries, conscious pain and suffering and death of Plaintiff BENJAMINS' decedent is limited, in accordance with the provisions of the Warsaw Convention, Defendant BEA's conditions of carriage and tariffs, and Defendant BEA's counterpart to CAB Agreement No. 18900, to an aggregate sum not in excess of $75,000.

WHEREFORE, Defendant BEA demands judgment dismissing the Complaint as to plaintiff, with costs and disbursements, or, if such relief not be granted, then that Defendant BEA's liability be limited as prayed herein.

Dated: New York, New York
May 15, 1974

CONDON & FORSYTH

By William L. Schierberl
A Member of the Firm
Attorneys for Defendant BRITISH EUROPEAN AIRWAYS CORPORATION
1251 Avenue of the Americas
New York, New York 10020
Telephone No. (212) 757-6870

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

236,011

ABRAHAM BENJAMINS, as Personal Representative of the Estate of HILDE BENJAMINS, deceased,

Plaintiff

74 C 590

J. Bruchhausen

-against-

BRITISH EUROPEAN AIRWAYS, HAWKER SIDDELEY AVIATION, LTD. and HAWKER SIDDELEY GROUP, LTD.,

Defendants

ANSWER

Defendant, HAWKER SIDDELEY AVIATION, LTD., by its attorneys, MENDES & MOUNT, answers the complaint herein, upon information and belief, as follows:

AS TO THE FIRST CAUSE OF ACTION

FIRST: Denies having any knowledge or information sufficient to form a belief as to the allegations contained in paragraph 1, except admits that Hawker Siddeley Aviation, Ltd., is a corporation organized under the laws of the United Kingdom, with a principal place of business thereat.

SECOND: Denies having any knowledge or information sufficient to form a belief as to the allegations contained in paragraph 2.

THIRD: Denies having any knowledge or information sufficient to form a belief as to the allegations contained in paragraph 3, except admits that British European Airways Inc. was a common carrier engaged in the business of transporting passengers.

FOURTH: Denies the allegations as contained in paragraph 4, except admits that on and prior to June 18, 1972, defendant, Hawker Siddeley Aviation, Ltd., designed, manufactured and assembled the said aircraft, known as a

Exhibit "B"

Trident I, and certain components thereof, and sold said aircraft to defendant, British European Airways, for the purpose of transporting passengers.

FIFTH: Denies having any knowledge or information sufficient to form a belief as to the allegations contained in paragraph 5.

SIXTH: Denies having any knowledge or information sufficient to form a belief as to the allegations contained in paragraph 6.

SEVENTH: Denies having any knowledge or information sufficient to form a belief as to the allegations contained in paragraph 7, except admits that on June 18, 1972 British European Airways' Flight 548, Registry G-ARPI, crashed in the vicinity of Staines, England, shortly after take-off from Heathrow Airport.

EIGHTH: Denies having any knowledge or information sufficient to form a belief as to the allegations contained in paragraph 8.

NINTH: Admits the allegations as contained in paragraph 9.

TENTH: Denies the allegations as contained in paragraph 10.

ELEVENTH: Denies having any knowledge or information sufficient to form a belief as to the allegations contained in paragraph 11.

TWELFTH: Denies having any knowledge or information sufficient to form a belief as to the allegations contained in paragraph 12.

THIRTEENTH: Denies the allegations as contained in paragraph 13.

AS TO THE THIRD CAUSE OF ACTION

FOURTEENTH: Answering paragraph 18, repeats and realleges each and every answer to the allegations as contained in paragraphs "ONE" through "EIGHT", inclusive, "ELEVEN" and "TWELVE" of the First Cause of Action of the complaint, as if set forth at length herein.

FIFTEENTH: Denies the allegations as contained in paragraph 19, and refers all questions of law to the Court.

SIXTEENTH: Denies the allegations as contained in paragraph 20.

SEVENTEENTH: Denies the allegations as contained in paragraph 21.

AS TO THE FOURTH CAUSE OF ACTION

EIGHTEENTH: Answering paragraph 22, repeats and realleges each and every answer to the allegations as contained in paragraphs "ONE" through "EIGHT", inclusive, "ELEVEN" and "TWELVE" of the First Cause of Action of the complaint, as if set forth at length herein.

NINETEENTH: Denies the allegations as contained in paragraph 23.

TWENTIETH: Denies the allegations as contained in paragraph 24.

TWENTY-FIRST: Denies the allegations as contained in paragraph 25.

TWENTY-SECOND: Denies the allegations as contained in paragraph 26.

FOR A FIRST AFFIRMATIVE DEFENSE

TWENTY-THIRD: Defendant claims that this Court lacks jurisdiction over the causes of action, since there is improper diversity of the parties.

FOR A SECOND AFFIRMATIVE DEFENSE

TWENTY-FOURTH: Defendant alleges that the causes of action pleaded in the complaint are barred by the Statute of Limitations.

FOR A THIRD AFFIRMATIVE DEFENSE

TWENTY-FIFTH: Defendant alleges that the above entitled action should be dismissed and/or the complaint stayed, since there is a prior pending action between the same parties, arising out of the same accident, now pending in the United States District Court, Central District of California.

WHEREFORE, defendant HAWKER SIDDELEY AVIATION, LTD. demands judgment dismissing the complaint as against it, together with the costs and disbursements of this action.

MENDES & MOUNT

BY: _____
A Member of the Firm
Attorneys for Defendant
Hawker Siddeley Aviation, Ltd.
Office & P.O. Address
27 William Street
New York, N.Y. 10005
(212) 344-7100

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ABRAHAM BENJAMINS, as Personal Representative of the Estate of HILDE BENJAMINS, deceased,	:	73 Civ. 341 MDL No. 147 74 C 590 (BENJAMINS)
Plaintiffs,	:	MOTION FOR LEAVE TO FILE AMENDED COMPLAINT
- against -	:	
BRITISH EUROPEAN AIRWAYS, HAWKER SIDDELEY AVIATION LTD., and HAWKER SIDDELEY GROUP LTD.,	:	
Defendants	:	

Plaintiff moves the court for leave to file an amended complaint, a copy of which is hereto attached as Exhibit A, on the ground that justice so requires in order that all issues between the parties may be fully litigated in this action; justice requires that plaintiff be given an opportunity to correct the defects in his original complaint.

RONALD L. M. GOLDMAN & ASSOCIATES
13737 Fiji Way
Marina Del Rey, California 90291
Tel: (213) 821-8886

KREINDLER & KREINDLER
99 Park Avenue
New York, New York 10016
Tel: (212) MU 7-8181

By _____
RONALD L. M. GOLDMAN
Attorneys for Plaintiffs

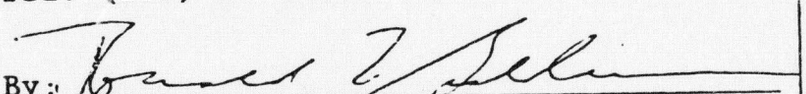
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ABRAHAM BENJAMINS, as Personal Representative of the Estate of HILDE BENJAMINS, deceased, Plaintiffs, -against- BRITISH EUROPEAN AIRWAYS, HAWKER SIDDELEY AVIATION LTD., and HAWKER SIDDELEY GROUP LTD., Defendants.	73 CIV. 341 MDL NO. 147 74 C 590 (BENJAMINS) MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT AND POINTS AND AUTHORITIES

Plaintiff moves the court for leave to file a second amended complaint, a copy of which is hereto attached as Exhibit A, on the ground that justice so requires in order that all issues between the parties may be fully litigated in this action; justice requires that plaintiff be given an opportunity to correct the defects in his amended complaint.

RONALD L. M. GOLDMAN & ASSOCIATES
13737 Fiji Way
Marina Del Rey, California 90291
Tel: (213) 821-8886

KREINDLER & KREINDLER
99 Park Avenue
New York, New York 10016
Tel: (212) MU 7-8181

By: 
RONALD L. M. GOLDMAN
Attorneys for Plaintiffs

STATEMENT OF FACTS

This action for wrongful death arises out of an aircraft crash in which 118 people lost their lives, including the plaintiff's decedent.

The aircraft involved in the crash was manufactured by defendant HAWKER SIDDELEY AVIATION, LTD., and operated by defendant BRITISH EUROPEAN AIRWAYS.

This plaintiff and many others filed actions against both defendants in several different United States District Courts. The remaining plaintiffs' actions, including this one, have been consolidated in accordance with Multi District Litigation Number 147 in this court on October 26, 1973. All actions under Multi District Litigation Number 147 and now pending before this court arise out of the same aircraft crash.

Plaintiff Abraham Benjamins, the personal representative of the Estate of Hilde Benjamins, deceased, is a Dutch citizen and a permanent resident of the United States, domiciled in the State of California. Both defendants have admitted to be citizens of the United Kingdom.

BASIS FOR MOTION FOR LEAVE TO AMEND THE COMPLAINT

Leave of court to amend the complaint is requested pursuant to Rule 15 of Title 28, Federal Rules of Civil Procedure.

In view of the court's ruling on the diversity question, Plaintiff's averment of juridiction based on diversity is deleted from this amended complaint.

Furthermore, a claim of damages for loss of handcarried and checked baggage is added to this amended complaint, so that all issues between the parties may be litigated in this action. The claim of loss of baggage arose from the same aircrash that killed the decedent.

Warsaw Treaty Article 18(1) provides for air carrier liability for lost or destroyed check baggage:

> "The carrier shall be liable for damage sustained in the event of the destruction or loss of, or of damage to, any checked baggage or any goods, if the occurrence which caused the damage so sustained took place during the transportation by air".

Article 30(3) of said Treaty gives rise to a right of action against an air carrier for such baggage losses.

Articles 18 and 30(3) have been construed to create an independent cause of action arising out of the Warsaw Convention. Seth v. B.O.A.C. (1st Cir. 1964) 329 F2d 302,305.

POINT I

THE COURT SHOULD IN ITS DISCRETION GRANT THE PLAINTIFF LEAVE OF COURT TO AMEND HIS COMPLAINT.

Federal Rules of Civil Procedure provide that a party may amend his pleading by leave of court and that leave shall be given freely when justice so requires. Rule 15(a) provides:

> "A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within 20 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders."

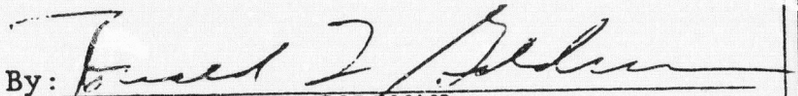
In Foman v. Davis 371 U.S. 178 (1962) the United States Supreme Court indicated that leave to file amendments should be freely given.

For additional authority please see Neff v. Emery Transportation Co. (2d Cir. 1960), 284 F2d 432; Beeler v. United States (3d Cir. 1964), 338 F2d 687.

Respectfully submitted,

RONALD L. M. GOLDMAN & ASSOCIATES
13737 Fiji Way
Marina Del Rey, California 90291
Tel: (213) 821-8886

KREINDLER & KREINDLER
99 Park Avenue
New York, New York 10016
Tel: (212) MU 7-8181

By: 
RONALD L. M. GOLDMAN
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

ABRAHAM BENJAMINS, as Personal Representative of the Estate of HILDE BENJAMINS, deceased,	:	73 Civ. 341 MDL No. 147 74 C 590 (BENJAMINS)
Plaintiff,	:	
-against-	:	NOTICE OF MOTION TO DISMISS COMPLAINT
BRITISH EUROPEAN AIRWAYS, HAWKER SIDDELEY AVIATION, LTD., and HAWKER SIDDELEY GROUP, LTD.,	:	
Defendants.	:	

----------x

PLEASE TAKE NOTICE that upon the annexed Affidavit of Michael J. Holland, sworn to the 19th day of October, 1976, the annexed Memorandum of Law and upon all of the proceedings heretofore had herein, the undersigned will move this Court before the Hon. Jack B. Weinstein, at the Emanuel Celler Federal Building, 225 Cadman Plaza East, Brooklyn, New York 11201 on the 3rd day of November 1976 at 10:00 in the forenoon of that day, or as soon thereafter as counsel can be heard, for an Order pursuant to Rule 12(b) of the Federal Rules of Civil Procedure dismissing the Complaint on the ground that the Court lacks jurisdiction of the subject matter of the action and for such further and different relief as to the Court is just and proper.

Dated: New York, New York
October 19, 1976

CONDON & FORSYTH

By _____
A Member of the Firm
Attorneys for Defendant
BRITISH EUROPEAN AIRWAYS
1251 Avenue of the Americas
New York, New York 10020
Tele: (212) 757-6870

TO: KREINDLER & KREINDLER
Attorneys for Plaintiff
99 Park Avenue
New York, New York 10016
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MENDES & MOUNT
Attorneys for Defendant
Hawker Siddeley Aviation, Ltd.
27 William Street
New York, New York 10005
Tele: (212)DI4-7100

GAIR, GAIR & CONASON
Attorneys for Plaintiffs
Hoehn & Smith
84 William Street
New York, New York 10038
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RONALD L. D. GOLDMAN & ASSOCIATES
Attorneys for Plaintiff
1151 Dove Street, Suite 160
Newport Beach, California 92660
Tele: (714) 833-1815

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ABRAHAM BENJAMINS, as Personal Representative of the Estate of HILDE BENJAMINS, deceased,	:	73 Civ. 341 MDL No. 147 74C 590 (BENJAMINS)
Plaintiff,	:	
-against-	:	AFFIDAVIT IN SUPPORT OF MOTION TO DISMISS COMPLAINT
BRITISH EUROPEAN AIRWAYS, HAWKER SIDDELEY AVIATION, LTD., and HAWKER SIDDELEY GROUP, LTD.,	:	
Defendants.	:	

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

MICHAEL J. HOLLAND, being first duly sworn, deposes and says:

1. I am an attorney and counselor at law associated with Condon & Forsyth, attorneys for defendant BRITISH EUROPEAN AIRWAYS (hereinafter "BEA").

2. I have actively participated in the defense of this action since its inception and am familiar with all of the proceedings heretofore had herein.

3. I submit this affidavit and memorandum of law in support of the within motion to dismiss the Complaint on the ground that the Court lacks jurisdiction of the subject matter of the action.

4. The Complaint filed in this action, a copy of which is annexed hereto as Exhibit A, alleges that

plaintiff, Abraham Benjamins, is a citizen of the State of California and that defendants were corporations duly organized and existing under and by virtue of the laws of the United Kingdom. Jurisdiction of this Court is alleged upon diversity of citizenship and requisite amount in controversy, 28 U.S.C. §1332. Complaint, paragraph 1.

5. Defendants have admitted that they are corporations organized under the law of the United Kingdom and, for purposes of diversity jurisdiction, are considered to be aliens.

6. At the deposition upon oral examination of plaintiff Abraham Benjamins conducted on October 7, 1976, plaintiff admitted that he was a Dutch citizen.

7. Accordingly, this Court lacks jurisdiction of the subject matter of the action in that there is not complete diversity between the plaintiff and the defendants. More specifically, plaintiff Abraham Benjamins is a Dutch citizen who is residing in the United States. The defendants are foreign corporations organized under the laws of the United Kingdom with their principal place of business in the United Kingdom.

8. It is respectfully submitted, therefore, that there is not complete diversity of citizenship between the plaintiff and the defendants and the Court, therefore, lacks jurisdiction of the subject matter of the action.

9. Authorities in support of this contention are set forth in the annexed Memorandum of Law to which the Court is respectfully referred.

WHEREFORE, defendant BRITISH EUROPEAN AIRWAYS respectfully requests that the Complaint be dismissed with costs and disbursements, together with whatever further and different relief seems appropriate to the Court.

Michael J. Holland

Michael J. Holland

Sworn to before me this
19th day of October, 1976.

Notary Public

FRANK A. SILANE
NOTARY PUBLIC, State of New York
No. 60-4608692
Qualified in Westchester County
Commission Expires March 30, 1977

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - -x

ABRAHAM BENJAMINS, as Personal Representative of the Estate of HILDE BENJAMINS, deceased,

Plaintiffs,

- against -

BRITISH EUROPEAN AIRWAYS, HAWKER SIDDELEY AVIATION LTD., and HAWKER SIDDELEY GROUP LTD.,

Defendants

- - - - - - - - - - - - - - - - - -x

Case No._____

COMPLAINT

Plaintiff Demands A Trial By Jury

Plaintiff, by his attorneys, KREINDLER & KREINDLER and RONALD L.M. GOLDMAN & ASSOCIATES, complaining of defendants, respectfully alleges:

A FIRST CLAIM AGAINST DEFENDANTS FOR THE WRONGFUL DEATH AND CONSCIOUS PAIN AND SUFFERING OF HILDE BENJAMINS BASED ON NEGLIGENCE OF HSA, GROUP, and WILLFUL MISCONDUCT OF BEA

1. Jurisdiction is founded on diversity of citizenship and amount under 28 United States Code, Section 1332, in that plaintiff, ABRAHAM BENJAMINS, is, and decedent, HILDE BENJAMINS, was, a citizen of the State of California and defendant BRITISH EUROPEAN AIRWAYS (hereinafter BEA), HAWKER SIDDELEY AVIATION LTD. (hereinafter HSA), HAWKER SIDDELEY GROUP LTD., (hereinafter GROUP), are corporations duly organized and existing under and by virtue of the laws of the United Kingdom; there is diversity between all plaintiffs and their decedents and all defendants, and the amount in controversy exceeds the sum of Ten Thousand Dollars ($10,000.00) exclusive of costs and disbursements.

2. Prior to the commencement of the within action, plaintiff ABRAHAM BENJAMINS was duly appointed Personal Representative of the Estate of HILDE BENJAMINS, deceased, pursuant to a

decree of the Superior Court, Los Angeles County, California, and said plaintiff is duly qualified and presently acting in said capacity.

3. At all times mentioned, defendant BEA was a common carrier engaged in the business of transporting passengers for hire by aircraft for valuable consideration in connection with which it owned, operated, maintained and controlled a certain Trident 1 aircraft, registration G-ARPI.

4. Prior to the times mentioned, defendant s HSA and GROUP designed, manufactured, assembled and sold said Trident 1 aircraf[illegible]tration G-ARPI, to defendant BEA for its use in transpo[illegible] passengers for hire.

5. On June 18, 1972, defendant BEA as a common carrier of passengers for hire by aircraft, accepted plaintiff's decedent as a passenger for hire aboard BEA Flight 548, pursuant to a ticket.

6. The said ticket provided for international transportation by air with points of departure and destination in the United States, and purchased in the United States.

7. On June 18, 1972, while plaintiff's decedent was a passenger for hire aboard said aircraft, it crashed in the vicinity of Staines, England, shortly after take-off from Heathrow Airport.

8. Said crash caused injuries, conscious pain and sufferi ng and death of plaintiff's deceased.

9. At all times mentioned, the United States of America and the United Kingdom were parties and high contracting parties to the convention for the unification of certain rules relating

to international transportation by air, known as the Warsaw Convention, Treaty Series, Number 876, 49 Stat. 3,000.

10. Said crash and death was caused by the defendants, their agents, servants and employees in that defendants HSA and GROUP negligently designed, manufactured, assembled and sold said aircraft and failed to properly modify, warn and instruct defendant BEA; and BEA was guilty of willful misconduct or such default as it is considered to be the equivalent of willful misconduct in the ownership, operation and maintenance of the aircraft and in the selection and training of flight crews; and defendants were otherwise negligent and guilty of willful misconduct.

11. HILDE BENJAMINS was and is survived by her husband, ABRAHAM BENJAMINS, and their two children, SHULAMITH BENJAMINS and MAURICE M. BENJAMINS, a minor, and as a result of said crash and death, they have sustained damages, including loss of support, services, consortium, parental care and guidance, the prospect of inheritance of future accumulations, burial and funeral expenses and other losses.

12. During flight and prior to, and at the time of, impact, HILDE BENJAMINS, deceased, consciously suffered great physical pain and mental anguish in contemplation of impending disaster and death.

13. By reason of the premises, plaintiff ABRAHAM BENJAMINS, Personal Representative of the Estate of HILDE BENJAMINS, deceased, has been damaged in the sum of THREE MILLION DOLLARS ($3,000,000) as a result of her wrongful death, and in the sum of ONE HUNDRED THOUSAND DOLLARS ($100,000) as a result of the conscious pain and suffering incurred.

A SECOND CLAIM AGAINST DEFENDANT BEA FOR THE WRONGFUL DEATH OF HILDE BENJAMINS BASED ON THE MONTREAL AGREEMENT

14. Plaintiff ABRAHAM BENJAMINS repeats and realleges each and every allegation contained in paragraphs One through Nine, inclusive, Eleven and Twelve.

15. Prior to the time mentioned, defendant BEA filed a Tariff and Agreement with the United States of America's Civil Aeronautics Board, which approved said Tariff and Agreement in CAB Number 189000 and Order Number E23680, 31 Fed. Reg. 4302 (1966), all of which were in valid force and effect on June 18, 1972.

16. Said crash was caused by defendant BEA in that it operated said aircraft when the crash occurred and caused the death of HILDE BENJAMINS, deceased, a passenger aboard.

17. By reason thereof, plaintiff ABRAHAM BENJAMINS, as Personal Representative of the Estate of HILDE BENJAMINS, deceased, has been damaged in the sum of SEVENTY-FIVE THOUSAND DOLLARS ($75,000).

A THIRD CLAIM AGAINST DEFENDANTS HSA AND GROUP FOR THE WRONGFUL DEATH AND CONSCIOUS PAIN AND SUFFERING OF HILDE BENJAMINS BASED ON BREACH OF WARRANTY.

18. Plaintiff ABRAHAM BENJAMINS, repeats and realleges each and every allegation contained in paragraphs One through Eight, inclusive, Eleven and Twelve.

19. Defendants HSA and GROUP expressly and/or impliedly warranted that the said aircraft and its component parts, including but not limited to its instruments, were airworthy, of merchantable quality, and fit and safe for the purposes for

which they were designed, manufactured, assembled, sold, intended and used.

20. Defendants HSA and GROUP breached said warranties in that the aircraft and its component parts, including but not limited to its instruments, were not airworthy, of merchantable quality, or fit and safe for the purposes for which they were designed, manufactured, assembled, sold, intended and used, and as a result thereof, said aircraft crashed, causing the damages alleged herein.

21. By reason of the premises, plaintiff ABRAHAM BENJAMINS, as Personal Representative of the Estate of HILDE BENJAMINS, deceased, has been damaged in the sum of THREE MILLION DOLLARS ($3,000,000) as a result of her wrongful death and in the sum of ONE HUNDRED THOUSAND DOLLARS ($100,000) as a result of conscious pain and suffering incurred.

A FOURTH CLAIM AGAINST DEFENDANTS HSA AND GROUP FOR THE WRONGFUL DEATH AND CONSCIOUS SUFFERING HILDE BENJAMINS BASED ON STRICT TORT LIABILITY

22. Plaintiff ABRAHAM BENJAMINS repeats and reallages each and every allegation contained in paragraphs One through Eight, inclusive, Eleven and Twelve.

23. Prior to June 18, 1972, defendants HSA and GROUP designed, manufactured, assembled and sold the said aircraft, its instruments, and its other component parts in a manner so as to render said aircraft, instruments and said component parts defective and unsafe for their intended use.

24. On June 18, 1972, said aircraft, its instruments, and its component parts were being operated for the use for which they were designed, manufactured, assembled and sold,

in a manner reasonably foreseeable by said defendants.

25. Defendants HSA and GROUP's designing, manufacture, assembling and sale of said aircraft, its instruments and its component parts caused said defect and unsafe conditions, and was a proximate cause of the crash, and as a result thereof, said defendants are strictly liable in tort to plaintiff.

26. By reason of the premises, plaintiff ABRAHAM BENJAMINS, as Personal Representative of the Estate of HILDE BENJAMINS, deceased, has been damaged in the sum of THREE MILLION DOLLARS ($3,000,000) as a result of her wrongful death and in the sum of ONE HUNDRED THOUSAND ($100,000) DOLLARS as a result of conscious pain and suffering incurred.

A FIFTH CLAIM AGAINST DEFENDANT BEA FOR THE WRONGFUL DEATH AND CONSCIOUS PAIN AND SUFFERING OF HILDE BENJAMINS BASED ON ABSOLUTE LIABILITY

27. Plaintiff ABRAHAM BENJAMINS, repeats and realleges each and every allegation contained in paragraphs One through Nine, inclusive, Eleven and Twelve.

28. Defendant BEA accepted HILDE BENJAMINS as a passenger aboard said aircraft with a ticket which did not meet the requirements of Article 3 of the Warsaw Convention.

29. As a result of such conduct, defendant BEA is absolutely liable to the plaintiff for all damages sustained, without limitation.

30. By reason of the premises, plaintiff ABRAHAM BENJAMINS, as Personal Representative of the Estate of HILDE BENJAMINS, deceased, has been damaged in the sum of THREE MILLION DOLLARS ($3,000,000) as a result of her wrongful

death, and in the sum of ONE HUNDRED THOUSAND DOLLARS ($100,000) as a result of conscious pain and suffering incurred.

WHEREFORE, plaintiff ABRAHAM BENJAMINS, as Personal Representative of the Estate of HILDE BENJAMINS, deceased, demands judgment against the defendants in the sum of THREE MILLION DOLLARS ($3,000,000) for wrongful death and ONE HUNDRED THOUSAND DOLLARS ($100,000) on the FIRST Claim and SEVENTY-FIVE THOUSAND DOLLARS ($75,000) on the SECOND Claim, together with interest, costs and disbursements of this action.

RONALD L.M. GOLDMAN & ASSOCIATES
9350 Wilshire Boulevard, Suite 224
Beverly Hills, California 90212
Tel: (213) 273-5700, 878-3500

KREINDLER & KREINDLER
99 Park Avenue
New York, New York 10016
Tel: (212) MU 7-8181

By_____
Attorney for Plaintiff

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- -

ABRAHAM BENJAMINS, as Personal Representative of the Estate of HILDE BENJAMINS, deceased,

Plaintiff

-against-

BRITISH EUROPEAN AIRWAYS, HAWKER SIDDELEY AVIATION, LTD., AND HAWKER SIDDELEY GROUP, LTD.,

Defendants

73 Civ. 341
MDL No. 147
74 C 590 (BENJAMINS)
Weinstein, J.

NOTICE OF MOTION TO DISMISS COMPLAINT

- -

S I R S:

PLEASE TAKE NOTICE that upon the annexed affidavit of James J. Finnerty, Jr., sworn to on the 3rd day of November, 1976, the undersigned will move this Court before the Honorable Jack B. Weinstein, at the Courthouse, 225 Cadman Plaza East, Brooklyn, New York, on the 17th day of November, 1976, at 10:00 in the forenoon of that day, or as soon thereafter as counsel can be heard, for an Order pursuant to Rule 12(b) of the Federal Rules of Civil Procedure dismissing the Complaint on the ground that the Court lacks jurisdiction of the subject matter of the action, and for such further and different relief as to the Court is just and proper.

DATED: New York, N.Y.
November 3, 1976

Yours, etc.

MENDES & MOUNT

BY: _____
James J. Finnerty, Jr.
Attorneys for Defendant
Hawker Siddeley Aviation, Ltd.
Office & P.O. Address
27 William Street
New York, N.Y. 10005
212-344-7100

TO: KREINDLER & KREINDLER
Attorneys for Plaintiffs Lanza et al.
Office & P.O. Address
99 Park Avenue
New York, N.Y. 10016

RONALD L. M. GOLDMAN & ASSOCIATES
Attorneys for Plaintiff Benjamins
Office & P.O. Address
13737 Fiji Way
Marina del Rey, CA 90291

CONDON & FORSYTH
Attorneys for Defendant BEA
Office & P.O. Address
1251 Avenue of the Americas
New York, N.Y. 10020

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - -

ABRAHAM BENJAMINS, as Personal Representative of the Estate of HILDE BENJAMINS, deceased,

Plaintiff

-against-

AFFIDAVIT

BRITISH EUROPEAN AIRWAYS, HAWKER SIDDELEY AVIATION, LTD., and HAWKER SIDDELEY GROUP, LTD.,

Defendants

- - - - - - - - - - - - - - - - - - -

STATE OF NEW YORK :
:SS.:
COUNTY OF NEW YORK:

JAMES J. FINNERTY, JR., being duly sworn, deposes and says:

I am an attorney with the firm of Mendes & Mount, attorneys for defendant Hawker Siddeley Aviation, Ltd. (HSA), and am familiar with all the proceedings heretofore had herein.

This affidavit is submitted in support of the motion to dismiss the Complaint on the grounds that the Court lacks jurisdiction over the subject matter of this action.

The Complaint filed in this action, a copy of which is annexed hereto as Exhibit "A", alleges that plaintiff, Abraham Benjamins, is a citizen of the State of California; that the deceased Hilde Benjamins was a citizen of the State of California; and that defendants were corporations duly organized and existing under and by virtue of the laws of the United Kingdom. Jurisdiction of this Court is alleged upon diversity of citizenship and requisite amount in controversy, 28 U.S.C. §1332.

The answer filed in this action by defendant Hawker Siddeley, a copy of which is attached hereto as Exhibit "B", pleaded the affirmative defense of lack of subject matter jurisdiction.

The deposition of plaintiff Abraham Benjamins was conducted on October 7, 1976 and at that time plaintiff admitted that he was a Dutch citizen. A copy of the pertinent parts of the aforementioned deposition are attached hereto as Exhibit "C".

Defendant HSA has admitted that it is a corporation organized under the laws of the United Kingdom, with its principal place of business thereat. It also appears that British European Airways (BEA) was a foreign corporation organized under the laws of England, with its principal place of business thereat. Thus, all the parties are aliens.

Accordingly, the undisputed facts are that plaintiff Abraham Benjamins is a Dutch citizen residing in the United States, who regularly returned to Holland, and the defendants HSA and BEA are foreign corporations organized under the laws of the United Kingdom with their principal place of business in the United Kingdom.

It is respectfully submitted, therefore, that this Court lacks subject matter jurisdiction over this controversy in that both the plaintiff and defendants are aliens. Therefore, there is no diversity of citizenship to establish jurisdiction under 28 U.S.C. §1332.

WHEREFORE, defendant HSA respectfully requests that the Complaint be dismissed, and for such further and different relief as to this Court may seem just and proper.

James J. Finnerty, Jr.

Sworn to before me this
3rd day of November, 1976.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - -x

ABRAHAM BENJAMINS, as Personal Representative of the Estate of HILDE BENJAMINS, deceased,

Plaintiffs,

- against -

BRITISH EUROPEAN AIRWAYS, HAWKER SIDDELEY AVIATION LTD., and HAWKER SIDDELEY GROUP LTD.,

Defendants

- - - - - - - - - - - - - - - - - - -x

Case No._____

COMPLAINT

Plaintiff Demands A Trial By Jury

Plaintiff, by his attorneys, KREINDLER & KREINDLER and RONALD L.M. GOLDMAN & ASSOCIATES, complaining of defendants, respectfully alleges:

A FIRST CLAIM AGAINST DEFENDANTS FOR THE WRONGFUL DEATH AND CONSCIOUS PAIN AND SUFFERING OF HILDE BENJAMINS BASED ON NEGLIGENCE OF HSA, GROUP, and WILLFUL MISCONDUCT OF BEA

1. Jurisdiction is founded on diversity of citizenship and amount under 28 United States Code, Section 1332, in that plaintiff, ABRAHAM BENJAMINS, is, and decedent, HILDE BENJAMINS, was, a citizen of the State of California and defendant BRITISH EUROPEAN AIRWAYS (hereinafter BEA), HAWKER SIDDELEY AVIATION LTD. (hereinafter HSA), HAWKER SIDDELEY GROUP LTD., (hereinafter GROUP), are corporations duly organized and existing under and by virtue of the laws of the United Kingdom; there is diversity between all plaintiffs and their decedents and all defendants, and the amount in controversy exceeds the sum of Ten Thousand Dollars ($10,000.00), exclusive of costs and disbursements.

2. Prior to the commencement of the within action, plaintiff ABRAHAM BENJAMINS was duly appointed Personal Representative of the Estate of HILDE BENJAMINS, deceased, pursuant to a

Exhibit "A"

decree of the Superior Court, Los Angeles County, California, and said plaintiff is duly qualified and presently acting in said capacity.

3. At all times mentioned, defendant BEA was a common carrier engaged in the business of transporting passengers for hire by aircraft for valuable consideration in connection with which it owned, operated, maintained and controlled a certain Trident 1 aircraft, registration G-ARPI.

4. Prior to the times mentioned, defendant s HSA and GROUP designed, manufactured, assembled and sold said Trident 1 aircraft, registration G-ARPI, to defendant BEA for its use in transporting passengers for hire.

5. On June 18, 1972, defendant BEA as a common carrier of passengers for hire by aircraft, accepted plaintiff's decedent as a passenger for hire aboard BEA Flight 548, pursuant to a ticket.

6. The said ticket provided for international transportation by air with points of departure and destination in the United States, and purchased in the United States.

7. On June 18, 1972, while plaintiff's decedent was a passenger for hire aboard said aircraft, it crashed in the vicinity of Staines, England, shortly after take-off from Heathrow Airport.

8. Said crash caused injuries, conscious pain and suffering and death of plaintiff's deceased.

9. At all times mentioned, the United States of America and the United Kingdom were parties and high contracting parties to the convention for the unification of certain rules relating

to international transportation by air, known as the Warsaw Convention, Treaty Series, Number 876, 49 Stat. 3,000.

10. Said crash and death was caused by the defendants, their agents, servants and employees in that defendants HSA and GROUP negligently designed, manufactured, assembled and sold said aircraft and failed to properly modify, warn and instruct defendant BEA; and BEA was guilty of willful misconduct or such default as it is considered to be the equivalent of willful misconduct in the ownership, operation and maintenance of the aircraft and in the selection and training of flight crews; and defendants were otherwise negligent and guilty of willful misconduct.

11. HILDE BENJAMINS was and is survived by her husband, ABRAHAM BENJAMINS, and their two children, SHULAMITH BENJAMINS and MAURICE M. BENJAMINS, a minor, and as a result of said crash and death, they have sustained damages, including loss of support, services, consortium, parental care and guidance, the prospect of inheritance of future accumulations, burial and funeral expenses and other losses.

12. During flight and prior to, and at the time of, impact, HILDE BENJAMINS, deceased, consciously suffered great physical pain and mental anguish in contemplation of impending disaster and death.

13. By reason of the premises, plaintiff ABRAHAM BENJAMINS, Personal Representative of the Estate of HILDE BENJAMINS, deceased, has been damaged in the sum of THREE MILLION DOLLARS ($3,000,000) as a result of her wrongful death, and in the sum of ONE HUNDRED THOUSAND DOLLARS ($100,000) as a result of the conscious pain and suffering incurred.

A SECOND CLAIM AGAINST DEFENDANT BEA FOR THE WRONGFUL DEATH OF HILDE BENJAMINS BASED ON THE MONTREAL AGREEMENT

14. Plaintiff ABRAHAM BENJAMINS repeats and realleges each and every allegation contained in paragraphs One through Nine, inclusive, Eleven and Twelve.

15. Prior to the time mentioned, defendant BEA filed a Tariff and Agreement with the United States of America's Civil Aeronautics Board, which approved said Tariff and Agreement in CAB Number 189000 and Order Number E23680, 31 Fed. Reg. 4302 (1966), all of which were in valid force and effect on June 18, 1972.

16. Said crash was caused by defendant BEA in that it operated said aircraft when the crash occurred and caused the death of HILDE BENJAMINS, deceased, a passenger aboard.

17. By reason thereof, plaintiff ABRAHAM BENJAMINS, as Personal Representative of the Estate of HILDE BENJAMINS, deceased, has been damaged in the sum of SEVENTY-FIVE THOUSAND DOLLARS ($75,000).

A THIRD CLAIM AGAINST DEFENDANTS HSA AND GROUP FOR THE WRONGFUL DEATH AND CONSCIOUS PAIN AND SUFFERING OF HILDE BENJAMINS BASED ON BREACH OF WARRANTY.

18. Plaintiff ABRAHAM BENJAMINS, repeats and realleges each and every allegation contained in paragraphs One through Eight, inclusive, Eleven and Twelve.

19. Defendants HSA and GROUP expressly and/or impliedly warranted that the said aircraft and its component parts, including but not limited to its instruments, were airworthy, of merchantable quality, and fit and safe for the purposes for

which they were designed, manufactured, assembled, sold, intended and used.

20. Defendants HSA and GROUP breached said warranties in that the aircraft and its component parts, including but not limited to its instruments, were not airworthy, of merchantable quality, or fit and safe for the purposes for which they were designed, manufactured, assembled, sold, intended and used, and as a result thereof, said aircraft crashed, causing the damages alleged herein.

21. By reason of the premises, plaintiff ABRAHAM BENJAMINS, as Personal Representative of the Estate of HILDE BENJAMINS, deceased, has been damaged in the sum of THREE MILLION DOLLARS ($3,000,000) as a result of her wrongful death and in the sum of ONE HUNDRED THOUSAND DOLLARS ($100,000) as a result of conscious pain and suffering incurred.

A FOURTH CLAIM AGAINST DEFENDANTS HSA AND GROUP FOR THE WRONGFUL DEATH AND CONSCIOUS SUFFERING HILDE BENJAMINS BASED ON STRICT TORT LIABILITY

22. Plaintiff ABRAHAM BENJAMINS repeats and reallages each and every allegation contained in paragraphs One through Eight, inclusive, Eleven and Twelve.

23. Prior to June 18, 1972, defendants HSA and GROUP designed, manufactured, assembled and sold the said aircraft, its instruments, and its other component parts in a manner so as to render said aircraft, instruments and said component parts defective and unsafe for their intended use.

24. On June 18, 1972, said aircraft, its instruments, and its component parts were being operated for the use for which they were designed, manufactured, assembled and sold,

in a manner reasonably foreseeable by said defendants.

25. Defendants HSA and GROUP's designing, manufacture, assembling and sale of said aircraft, its instruments and its component parts caused said defect and unsafe conditions, and was a proximate cause of the crash, and as a result thereof, said defendants are strictly liable in tort to plaintiff.

26. By reason of the premises, plaintiff ABRAHAM BENJAMINS, as Personal Representative of the Estate of HILDE BENJAMINS, deceased, has been damaged in the sum of THREE MILLION DOLLARS ($3,000,000) as a result of her wrongful death and in the sum of ONE HUNDRED THOUSAND ($100,000) DOLLARS as a result of conscious pain and suffering incurred.

A FIFTH CLAIM AGAINST DEFENDANT BEA FOR THE WRONGFUL DEATH AND CONSCIOUS PAIN AND SUFFERING OF HILDE BENJAMINS BASED ON ABSOLUTE LIABILITY

27. Plaintiff ABRAHAM BENJAMINS, repeats and realleges each and every allegation contained in paragraphs One through Nine, inclusive, Eleven and Twelve.

28. Defendant BEA accepted HILDE BENJAMINS as a passenger aboard said aircraft with a ticket which did not meet the requirements of Article 3 of the Warsaw Convention.

29. As a result of such conduct, defendant BEA is absolutely liable to the plaintiff for all damages sustained, without limitation.

30. By reason of the premises, plaintiff ABRAHAM BENJAMINS, as Personal Representative of the Estate of HILDE BENJAMINS, deceased, has been damaged in the sum of THREE MILLION DOLLARS ($3,000,000) as a result of her wrongful

death, and in the sum of ONE HUNDRED THOUSAND DOLLARS ($100,000) as a result of conscious pain and suffering incurred.

WHEREFORE, plaintiff ABRAHAM BENJAMINS, as Personal Representative of the Estate of HILDE BENJAMINS, deceased, demands jusgment against the defendants in the sum of THREE MILLION DOLLARS ($3,000,000) for wrongful death and ONE HUNDRED THOUSAND DOLLARS ($100,000) on the FIRST Claim and SEVENTY-FIVE THOUSAND DOLLARS ($75,000) on the SECOND Claim, together with interest, costs and disbursements of this action.

RONALD L.M. GOLDMAN & ASSOCIATES
9350 Wilshire Boulevard, Suite 2[illegible]
Beverly Hills, California 90212
Tel: (213) 273-5700, 878-3500

KREINDLER & KREINDLER
99 Park Avenue
New York, New York 10016
Tel: (212) MU 7-8181

By_____
Attorney for Plaintiff

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

236,011

ABRAHAM BENJAMINS, as Personal Representative of the Estate of HILDE BENJAMINS, deceased,

74 C 590

J. Bruchhausen

Plaintiff

-against-

BRITISH EUROPEAN AIRWAYS, HAWKER SIDDELEY AVIATION, LTD. and HAWKER SIDDELEY GROUP, LTD.,

ANSWER

Defendants

Defendant, HAWKER SIDDELEY AVIATION, LTD., by its attorneys, MENDES & MOUNT, answers the complaint herein, upon information and belief, as follows:

AS TO THE FIRST CAUSE OF ACTION

FIRST: Denies having any knowledge or information sufficient to form a belief as to the allegations contained in paragraph 1, except admits that Hawker Siddeley Aviation, Ltd., is a corporation organized under the laws of the United Kingdom, with a principal place of business thereat.

SECOND: Denies having any knowledge or information sufficient to form a belief as to the allegations contained in paragraph 2.

THIRD: Denies having any knowledge or information sufficient to form a belief as to the allegations contained in paragraph 3, except admits that British European Airways Inc. was a common carrier engaged in the business of transporting passengers.

FOURTH: Denies the allegations as contained in paragraph 4, except admits that on and prior to June 18, 1972, defendant, Hawker Siddeley Aviation, Ltd., designed, manufactured and assembled the said aircraft, known as a

Trident I, and certain components thereof, and sold said aircraft to defendant, British European Airways, for the purpose of transporting passengers.

FIFTH: Denies having any knowledge or information sufficient to form a belief as to the allegations contained in paragraph 5.

SIXTH: Denies having any knowledge or information sufficient to form a belief as to the allegations contained in paragraph 6.

SEVENTH: Denies having any knowledge or information sufficient to form a belief as to the allegations contained in paragraph 7, except admits that on June 18, 1972 British European Airways' Flight 548, Registry G-ARPI, crashed in the vicinity of Staines, England, shortly after take-off from Heathrow Airport.

EIGHTH: Denies having any knowledge or information sufficient to form a belief as to the allegations contained in paragraph 8.

NINTH: Admits the allegations as contained in paragraph 9.

TENTH: Denies the allegations as contained in paragraph 10.

ELEVENTH: Denies having any knowledge or information sufficient to form a belief as to the allegations contained in paragraph 11.

TWELFTH: Denies having any knowledge or information sufficient to form a belief as to the allegations contained in paragraph 12.

THIRTEENTH: Denies the allegations as contained in paragraph 13.

AS TO THE THIRD CAUSE OF ACTION

FOURTEENTH: Answering paragraph 18, repeats and realleges each and every answer to the allegations as contained in paragraphs "ONE" through "EIGHT", inclusive, "ELEVEN" and "TWELVE" of the First Cause of Action of the complaint, as if set forth at length herein.

FIFTEENTH: Denies the allegations as contained in paragraph 19, and refers all questions of law to the Court.

SIXTEENTH: Denies the allegations as contained in paragraph 20.

SEVENTEENTH: Denies the allegations as contained in paragraph 21.

AS TO THE FOURTH CAUSE OF ACTION

EIGHTEENTH: Answering paragraph 22, repeats and realleges each and every answer to the allegations as contained in paragraphs "ONE" through "EIGHT", inclusive, "ELEVEN" and "TWELVE" of the First Cause of Action of the complaint, as if set forth at length herein.

NINETEENTH: Denies the allegations as contained in paragraph 23.

TWENTIETH: Denies the allegations as contained in paragraph 24.

TWENTY-FIRST: Denies the allegations as contained in paragraph 25.

TWENTY-SECOND: Denies the allegations as contained in paragraph 26.

FOR A FIRST AFFIRMATIVE DEFENSE

TWENTY-THIRD: Defendant claims that this Court lacks jurisdiction over the causes of action, since there is improper diversity of the parties.

FOR A SECOND AFFIRMATIVE DEFENSE

TWENTY-FOURTH: Defendant alleges that the causes of action pleaded in the complaint are barred by the Statute of Limitations.

FOR A THIRD AFFIRMATIVE DEFENSE

TWENTY-FIFTH: Defendant alleges that the above entitled action should be dismissed and/or the complaint stayed, since there is a prior pending action between the same parties, arising out of the same accident, now pending in the United States District Court, Central District of California.

WHEREFORE, defendant HAWKER SIDDELEY AVIATION, LTD., demands judgment dismissing the complaint as against it, together with the costs and disbursements of this action.

MENDES & MOUNT

BY: _____
A Member of the Firm
Attorneys for Defendant
Hawker Siddeley Aviation, Ltd.
Office & P.O. Address
27 William Street
New York, N.Y. 10005
(212) 344-7100

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

ABRAHAM BENJAMINS, as Personal Representative of the Estate of HILDE BENJAMINS, Deceased, :

Plaintiff, :

-against- : 74 C 590

BRITISH EUROPEAN AIRWAYS, HAWKER SIDDELEY AVIATION, LTD. and HAWKER SIDDELEY GROUP, LTD., :

Defendants. :

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Deposition of Plaintiff ABRAHAM BENJAMINS, held at the offices of Mendes & Mount, Esqs., 27 William Street, New York, New York, on the 6th day of October 1976, at 10:30 o'clock a.m., pursuant to Order, before GALE SPINNER, a Notary Public of the State of New York.

Exhibit "C"

Appearances:

RONALD L.M. GOLDMAN & ASSOCIATES
Attorneys for Plaintiff
1151 Dove Street
Newport Beach, California 92660

BY: RONALD L.M. GOLDMAN, ESQ.,
Of Counsel

CONDON & FORSYTH
1251 Avenue of the Americas
New York, New York 10020

BY: PAUL R. MARRONE, ESQ.,
Of Counsel

MENDES & MOUNT, ESQS.,
Attorneys for Defendant
27 William Street
New York, New York

BY: JAMES J. FINNERTY, ESQ.,
Of Counsel

- - - - -

Q Mr. Benjamins, you were born in Holland; is that correct?

A Right.

Q And was your wife Hilde also born in Holland?

A No, she was not.

MR. GOLDMAN: These facts have been covered in interrogatories.

MR. FINNERTY: I know, but the answers themselves are not admissible. If I have a deposition I am entitled to go through what the answers are.

Q Was that in Germany rather than Holland?

A Germany.

Q What was her domicile at the time of her death in June of 1972?

A 300 South Bedford Drive, Beverly Hills, California.

Q I understand she resided there with you; is that correct?

A Correct.

Q Did she have a nationality other than U.S.?

A She was Dutch -- I forgot.

MR. GOLDMAN: Are you asking if she was a U.S. citizen?

MR. FINNERTY: That is my next question.

THE WITNESS: She was Dutch.

Q She was not a U.S. citizen?

A No.

Q And that would be true up until her death in 1972?

A Correct.

Q How about yourself, sir? Are you a U.S. citizen?

A I am still a U.S. citizen -- I am a Dutch citizen. I am a Dutch citizen.

Q Where were your children Shulamith and Maurice born?

A Shulamith was born in Holland and Maurice in Los Angeles.

Q L.A.?

A Yes.

Q To your knowledge has Shulamith become a United States citizen?

A No, she has not.

Q She is still a Dutch citizen?

A Yes.

Q Does Maurice, is he a United States citizen?

A Yes, by birth.

IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D.N.Y.
★ MAR 17 1977 ★
TIME A.M.
P.M.

CLOSED

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

MAR 21 1977

ABRAHAM BENJAMINS, etc

-vs-

BRITISH EUROPEAN AIRWAYS, et al

DOCKET NO. 74 C 590

ORDER OF DISMISSAL

~~ORDER OF DISCONTINUANCE~~

M'FILMED

~~It appearing that it has been reported to the Court that the above action has been settled:~~

IT is, on this 17 day of MARCH 1977

ORDERED, that this action is hereby dismissed, ~~discontinued, without costs, and without prejudice to the right to reopen the action if the settlement is not consummated.~~

Jack B. Weinstein

UNITED STATES DISTRICT JUDGE

C-30

Rev. 11/26/69

BEA-2/23/77 Hearing Transcript
before Hon.J.B.Weinstein

MAR 4 1977

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

ABRAHAM BENJAMINS, as
Personal Representative of the
Estate of Hilde Benjamins,
deceased,
Plaintiffs

-against-

73 C 341
MDL No. 147
74 C 590

BRITISH EUROPEAN AIRWAYS,
HAWKER SIDDELEY AVIATION, LTD., and
HAWKER SIDDELEY GROUP, LTD.,
Defendants

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United States Courthouse
Brooklyn, New York

February 23, 1977
10:00 o'clock A.M.

B e f o r e :

HONORABLE JACK B. WEINSTEIN, U.S.D.J.

EMMANUEL KARR
OFFICIAL COURT REPORTER

I hereby [illegible]
[illegible] and ac[illegible]
[illegible] note.

[illegible]
Official Court Reporter
U.S. District Court

Appearances:

Attorneys for Plaintiff:

RONALD L. M. GOLDMAN
and ASSOCIATES

BY: RONALD L. M. GOLDMAN, ESQ.
Of Counsel

and

MESSRS. KREINDLER & KREINDLER

BY: STANLEY J. LEVY, ESQ.
Of Counsel

MESSRS. CONDON & FORSYTH

BY: RONALD E. PACE, ESQ.
Of Counsel

MESSRS. MENDES & MOUNT

BY: JAMES J. FINNERTY, JR., ESQ.

and

MATTHEW J. CORRIGAN, ESQ.
Of Counsel

STEPHEN H. MACKAUL, ESQ.
GAIR, GAIR & CONASON,
Attorneys at Law;

BY: HERBERT S. SCHMERTZ, ESQ.
Of Counsel

PENGAD CO., BAYONNE, N.J. 07002 - FORM 740

(Following discussion between the parties, Judge Weinstein made the following statement.)

THE COURT: Plaintiff contends that the Warsaw Treaty establishes an independent right of action or a claim for relief as opposed to for purposes of Federal jurisdiction.

There is a suggestion in Smith versus Canadian Pacific Airways Limited, 452 F 2nd, 798, a Second Circuit 1971 case, indicating a substantial basis for this contention.

See also G. Nathan Hawkins, Jr., "the Cause of Action Under the Warsaw Convention," 26 Journal of Air Law and Commerce 323 (1959).

There is also support for the position in the First Circuit, Seth versus British Overseas Airways Corporation, 329 F 2nd 202, First Circuit 1964.

This Court believes it is bound by the dicta in Noel versus Linea Aeropostal Venezolona 247 F. 2nd 677, Second Circuit, 1957.

See also Husserl versus Swiss Air Transport Co., Ltd., 351 Supp. 702, 706, a Southern District of New York 1972 case, affirmed without opinion essentially for the reasons set forth by Judge Tyler in a well-considered opinion, Greca Husserl versus Swiss Air Transport Co., 485 F. 2nd, 1240, a Second Circuit 1973

PENGAD CO., BAYONNE, N.J. 07002 - FORM 740

case.

This matter is an important one and should be resolved by the Circuit Court after a full consideration and analysis. The Court has found no such full consideration and analysis in any of the Second Circuit decisions.

The case of Abraham Benjamins, as Personal Representative of the Estate of Hilda Benjamins, Deceased, is dismissed.

Take it up and see what you can do with it.

MR. GOLDMAN: Is that against all parties?

THE COURT: Yes, against all the parties.

I'm not going to bother writing on it because I don't think it is necessary.

(Discussion was then held off the record.)

THE COURT: The motion of plaintiff Benjamins to amend the complaint to allege a baggage claim is also dismissed. The amount claimed is $1,000, this is less than the $10,000 required, since the Court finds that the pendent jurisdiction claims may not be aggregated for the purpose of providing a Federal issue basis for jurisdiction.

MR. GOLDMAN: I believe what you said was that the motion for the claim was dismissed, but what I'm

PENGAD CO., BAYONNE, N.J. 07002 - FORM 740

asking for is a ruling granting our motion to file the amended complaint.

THE COURT: That is granted.

MR. GOLDMAN: Then there is the Order of Dismissal on the jurisdictional ground?

THE COURT: Yes.

MR. GOLDMAN: All right.

MR. FINNERTY: Your Honor, on behalf of the defendants and in regard to the second motion to serve a second amended complaint filed by the plaintiff Benjamins, it is our position that such a course of action would be barred under the statute of limitations, and that the relationship-back theory mentioned by plaintiff is not applicable to that type of cause of action, so that therefore in addition to any other arguments I have raised before your Honor today and decided by your Honor, we also claim that that cause of action would be barred under the statute of limitation.

THE COURT: The Court does not rule on that issue, it is not necessary to make that ruling.

If the case is remanded on the grounds that there is jurisdiction, then the Court will have to consider the issue of fairness, notice and the like, and in

PENGAD CO., BAYONNE, N.J. 07002 - FORM 740

deciding whether there should be a relationship back, information sufficient to make such a ruling is not before the Court and may have to be established by further discovery.

All right, gentlemen.

(There was further discussion off the record.)

THE COURT: With respect to the testimony before the British hearing, I am not going to take the testimony before the British hearing, either of live witnesses or deposed witnesses, whichever is preferable, yet the testimony at the British hearing can be used for impeachment purposes, but if there is a witness who cannot now be deposed, that is produced as a live witness, I will take that testimony under 803 (4) or 803 (5), upon giving appropriate notice.

The next question is whether the manufacturer has the advantage of the Warsaw Convention.

MR. FINNERTY: That is withdrawn, your Honor, as moot.

THE COURT: I don't believe it has been.

MR. FINNERTY: Well, can we have a ruling on that?

THE COURT: The Court makes no ruling on that issue.

PENGAD CO., BAYONNE, N.J. 07002 - FORM 740

74C 590 ABRAHAM BENJAMINS v. BRITISH EUROPEAN AIRWAYS, ET AL.

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS	
4/17/74	Complaint filed. Summons issued.	1	JS5
5-9-74	Summons returned and filed/executed.	2	
5/17/74	ANSWER of deft British European Airways Corp. filed.	3	
6-6-74	ANSWER of deft, Hawker Siddeley Aviation, Ltd. filed.	4	
6-6-74	Two sets of interrogatories propounded to pltffs. by deft, Hawker Siddeley Aviation, Ltd. filed.	5/6	
8/22/74	Deft's interrogatories to pltff filed	7	
4-15-75	By BRUCHHAUSEN, J.-Order dtd 4-15-75 that the depositions in this case shall commence in London on 6-9-75 and continue until 6-20-75 filed. See 73C 341.	--	
8-11-75	Notice of motion ret 8-5-75 for an order vacating or modifying pltff's third request for production, etc filed. See 73C 341.	--	
3-9-76	Notices of deft BEA to take deposition filed.	8-12	
3-12-76	Interrogatories interrogatories filed.	13	
3-12-76	Request for porduction of documents filed.	14	
3-12-76	Interrogatories filed.	15	
3-12-76	Request for porduction of documents filed.	16	
7-16-76	Pltff's answers to interrogatories propounded by deft filed.	17	
7-16-76	Pltff's answers to interrogatories filed.	18	
9-14-76	By RAYFIEL, J.--Order to show cause dtd 9-10-76 ret. 9-15-76 (before MISHLER, CH. J. as misc.) fir an order dismissing the complaint for failure of pltff to appear for EBT filed without proof of service. (atty notified as to time & judge).	19	
9-15-76	Before MISHLER,J.- Case called for OSC to dismiss Motion argued Pltff to appear on 10-6-76 to be deposed Order to be submitted by the deft		
10-26-76	Notice of change of address filed.	~~19~~ 20	
11-3-76	Letter dtd 11-1-76 to J. Weinstein from Ronald E. Pace re adjourning BEA's motion to 11-17-76 filed. SO ORDERED 11-2-76	21	
11-5-76	Letter dtd 11-4-76 to J. Weinstein from James J. Finnerty, Jr. re motion to dismiss ret 11-17-76 filed. BY WEINSTEIN,J-Order dtd 11-17-76 re motion to be heard on 11-17-76.	22	
11-5-76	Notice of motion to dismiss ret 11-17-76 filed.	23	
11-17-76	Before WEINSTEIN,J.-Case called for motion to dismiss. Pltffs Benjamin motion to amend complaint is granted and defts motion to dismiss on the grounds of diversity is granted as indicated Case adjd to 1-6-77 for Benjamins motion		

CIVIL 74-C-590 BENJAMINS vs BEA

~~CRIMINAL~~ DOCKET

DATE	PROCEEDINGS
11-23-76	Stenographic transcript dated 11-17-76 filed. (24)
12-27-76	Pretrial memorandum of law on behalf of plaintiff Abraham Benjamins, as personal representative of the estate of Hilde Benjamins filed. (25)
12-27-76	Submission of pretrial law on behalf of Abraham Benjamins, as personal representative of the Estate of Hilde Benjamins filed. (26
1-11-77	Plaff's memo of law in opposition to deft's motion to dismiss complaint for lack of subject matter jurisdiction filed. (2
2/8/77	Memo of law in support of pltff's motion for leave of court to file a second amended complaint filed. (28
~~2/8/77~~	~~Memorandum of law in support of pltff's motion for leave to file a second amended complaint filed.~~ (29)
2-22-77	Before WEINSTEIN, J. - Case called. Deft's motion to dismiss the oomplaint. Motion argued and granted. Submit order. Pltff's motion to file an amended complaint is granted. Deft's motion to dismiss the amended complaint is granted. Submit order.
3/4/77	Sten's transcript dtd 2/23/77 filed. (29)
3-17-77	By WEINSTEIN, J-Order of dismissal dtd 3-17-77 filed. (30)
3-29-77	By WEINSTEIN, J-Order denying pltff's motion for leave to file second amended complaint dtd 3-29-77 filed. (31)
4-20-77	Notice of appeal filed. Copy to C of A. mg (32)
5-9-77	Civil appeal scheduling order ret 5-20-77 filed. mg (33

D C 109

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - -

ABRAHAM BENJAMINS, as Personal Representative of the Estate of Hilde Benjamins, deceased,

Plaintiffs,

-against-

BRITISH EUROPEAN AIRWAYS, HAWKER SIDDELEY AVIATION, LTD., and HAWKER SIDDELEY GROUP, LTD.,

Defendants.

- - - - - - - - - - - - - - - - - -

73 C 341
MDL No. 147
74 C 590 (Benjamins)

Notice of Appeal.

Notice is hereby given that ABRAHAM BENJAMINS, as Personal Representative of the Estate of Hilde Benjamins, deceased, Plaintiffs above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the Order of Dismissal entered in this action on the 17th day of March, 1977.

April 12, 1977

KREINDLER & KREINDLER
99 Park Ave., N.Y., N. Y.

RONALD L. M. GOLDMAN AND ASSOCIATES

RONALD L. M. GOLDMAN

13

(VERIFICATION - 446 and 2015.5 C.C.P.)

STATE OF CALIFORNIA, }ss.
County of _____ *I, the undersigned, say: I am the* _____

_____

_____

in the above entitled action; I have read the foregoing _____

_____

and know the contents thereof; and that the same is true of my own knowledge, except as to the matters which are therein stated upon my information or belief, and as to those matters that I believe it to be true.

_____

I certify (or declare) under penalty of perjury, that the foregoing is true and correct.

Executed on _____ (date) *at* _____ (place), *California*

_____ (Signature)

(PROOF OF SERVICE BY MAIL - 1013a, 2015.5 C.C.P.)

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES } ss.

I am a resident of/employed in the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address/~~residence~~ address is:

13737 Fiji Way, Marina Del Rey, California 90291

On April 12, *19* 77, *I served the within* Notice of Appeal

_____

on the defendants

in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California *addressed as follows:*

Ronald E.Pace, Esq.
Condon & Forsyth
1251 Avenue of the Americas
New York, New York 10020

(courtesy copy):
Stanley J. Levy, Esq.
Kreindler & Kreindler
99 Park Avenue
New York, New York 10016

James J. Finnerty,Jr.,Esq.
Mendes & Mount
27 William St., N.Y.,New York 10005

I certify (or declare), under penalty of perjury, that the foregoing is true and correct.*

Executed on April 12, 1977 (date) *at* Marina Del Rey (place), *California*

Subscribed & Sworn to before me
a Notary Public this 12th day of
Apr.1977. M. L. McGuire

Ronald L. M. Goldman
Signature

* *Both the verification and proof of service by mail forms, being signed under penalty of perjury, do not require notarization.*

OFFICIAL SEAL
M. L. McGUIRE
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
LOS ANGELES COUNTY
My Commission Expires October 27, 1979

WOLCOTTS 811P. Rev 2-76